

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

Andrea Amaya (State Bar #348080)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

aamaya@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PARASTOO MABOUDI, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

THE NEIMAN MARCUS GROUP LLC, a
Delaware Limited Liability Company; and
DOES 1 through 50, Inclusive;

Defendants.

Case No. 21CV391973

Action Filed: December 15, 2021

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFFS' MOTION TO APPROVE
PAGA ACTION SETTLEMENT**

Hearing Date: June 26, 2024

Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner

Dept.: 19

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am the managing partner of the law firm of JCL LAW FIRM, APC, co-lead counsel of
3 record for Plaintiffs PARASTOO MABOUDI and FRANCESCO MASIELLO (collectively hereinafter
4 “Plaintiffs”) in this matter filed against THE NEIMAN MARCUS GROUP LLC (hereinafter
5 “Defendant”). The following facts are within my own personal knowledge, and if called as a witness,
6 I could testify competently to the matters stated herein.

7 2. This declaration is being submitted in support of Plaintiffs’ Motion to Approve PAGA
8 Action Settlement.

9 **I. EXHIBITS**

10 3. A true and correct copy of the fully executed PAGA Settlement Agreement
11 (“Agreement”) is attached hereto as **Exhibit #1**.

12 4. True and correct copies of Plaintiff Maboudi’s October 8, 2021 PAGA Notice and
13 Plaintiff Masiello’s May 24, 2023 PAGA Notice are attached hereto as **Exhibit #2**.

14 5. A true and correct copy of the January 24, 2024, proof of filing of Motion for Approval
15 of PAGA Action Settlement, is attached hereto as **Exhibit #3**.

16 6. A true and correct copy of the JCL Law Firm, APC, “Time and Billing Journal” as of
17 February 8, 2024, is attached hereto as **Exhibit #4**.

18 7. A true and correct copy of the JCL Law Firm, APC, “Transaction Summary as of
19 February 8, 2024, is attached hereto as **Exhibit #5**.

20 8. A true and correct copy of the JCL Law Firm, APC, Firm Resume is attached hereto as
21 **Exhibit #6**.

22 **II. INTRODUCTION**

23 9. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
24 the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product of
25 informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As
26 discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval.
27 Accordingly, Plaintiffs and Plaintiffs' Counsel respectfully request this Court grant approval of the

1 Agreement. Plaintiffs' Counsel's Qualifications are set forth in the attached Resume, attached hereto
2 as **Exhibit #6**.

3 10. On October 8, 2021, Plaintiff Maboudi, on behalf of herself other Aggrieved Employees,
4 sent Defendant and the LWDA a Notice of Violations ("PAGA Notice") memorializing claims against
5 Defendant for alleged violations of the California Labor Code (LWDA Case Number LWDA-CM-
6 847931-21).

7 11. The 65-day "waiting period" on Plaintiff Maboudi's rights to file a civil action under
8 PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff Maboudi
9 that they intended to investigate the claims in her PAGA Notice. To date, the LWDA still has not
10 advised Plaintiff Maboudi of any intent to take action with respect to the claims in her PAGA Notice.

11 12. On December 15, 2021, Plaintiff Maboudi filed a PAGA representative action complaint
12 against Defendant alleging a single cause of action for violations of the Private Attorney General Act.
13 The complaint sought civil penalties for Defendant's alleged failure to provide compliant meal and rest
14 periods, failure to provide compliant rest periods, failure to pay all minimum and regular wages, failure
15 to pay all overtime and double time wages, failure to maintain true and accurate records, failure to
16 provide accurate itemized wage statements, failure to reimburse employees for required business
17 expenses, failure to pay overtime, double time, meal and rest period premiums, and sick pay at the
18 regular or proper rate of pay, and failure to timely pay wages due during, and upon termination of
19 employment. On May 24, 2023, Plaintiff Masiello, on behalf of himself and other Aggrieved
20 Employees, sent Defendant and the LWDA a PAGA Notice memorializing claims against Defendant
21 for alleged violations of the California Labor Code (LWDA Case Number LWDA-CM-957220-23).

22 13. The 65-day "waiting period" on Plaintiff Masiello's rights to file a civil action under
23 PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying him that they
24 intended to investigate the claims in his PAGA Notice. To date, the LWDA still has not advised Plaintiff
25 Masiello of any intent to take action with respect to the claims in Plaintiff Masiello's PAGA Notice.

26 14. On August 1, 2023, the Parties attended a full-day mediation with experienced wage and
27 hour class and PAGA action mediator Jeffrey Ross. In advance of the mediation, Defendant provided
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1 Plaintiffs with sufficient information to properly evaluate Defendant’s liability exposure for civil
2 penalties to the Aggrieved Employees. Among the data and documents Defendant produced included,
3 but was not limited to, the total number Aggrieved Employees, pay periods, written wage and hour
4 policies, employee handbooks, and time and payroll records for Aggrieved Employees.

5 15. At the conclusion of the mediation, and with the assistance of the mediator, the Parties
6 reached a settlement. The Parties subsequently executed a binding and enforceable Memorandum of
7 Understanding (“MOU”). After reaching an agreement in the principle, the Parties drafted and
8 negotiated a long-form settlement which is the subject of the instant motion. The Settlement was
9 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation –
10 including the risk of Plaintiffs not being able to maintain representative claims and establishing
11 manageability, the risk of Plaintiffs’ individual PAGA claims being compelled to arbitration amidst a
12 changing legal landscape regarding PAGA arbitrability (as both Plaintiffs purportedly signed arbitration
13 agreements), the difficulty of proving Plaintiffs’ claims in a manageable trial, the merits of Defendant’s
14 potential defenses, and the significant delay and potential appellate issues inherent to litigation – and
15 was reached after extensive arm’s length negotiations, with the assistance of the mediator. Following
16 the Parties’ mediation, the Parties stipulated to permit Plaintiff Maboudi to file a First Amended
17 Complaint (“FAC”) in order to add Masiello as a named plaintiff in the action. The FAC was filed on
18 January 16, 2024.

19 16. The Settlement is intended to fully and finally resolve the Released PAGA Claims
20 asserted by Plaintiffs on behalf of the Aggrieved Employees and State of California. This is only a
21 Settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the
22 individual claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that
23 is not a PAGA claim.¹ Nor does this Settlement waive Defendant’s right to assert *res judicata* or other
24 available defenses to any asserted claim or lawsuit.

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26
27 ¹ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: “Nonparty employees are bound by the judgment in
28 an action under the PAGA, but only with respect to recovery of civil penalties.”

1 17. Pursuant to California Labor Code Section 2699(1), Plaintiffs are providing a copy of the
2 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
3 for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiffs will
4 submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement
5 within ten (10) days after entry of judgment or order.

6 **III. THE SETTLEMENT IS FAIR AND REASONABLE**

7 18. The Gross Settlement Amount of \$1,750,000 is fair and reasonable and, therefore, should
8 be approved. Here, *without stacking* the PAGA penalties, Defendant's *maximum* liability exposure is
9 estimated at approximately \$7,229,478.15 in PAGA penalties.

10 19. Plaintiffs contends that Defendant pays sales associates and other employees via a
11 compensation structure that pays them *either* an hourly wage or their commission, whichever is greater.

12 20. When the employee's commission is greater, Plaintiff alleges that this structure amounts
13 to a commission-only compensation plan. Under such a compensation plan, the law requires an
14 employer to separately compensate employees for non-selling time, such as such as time spent in
15 meetings, in trainings, and during rest periods. See *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App.
16 5th 98, 103 (2017), *as modified* (Mar. 20, 2017). Separately compensating employees for non-selling
17 time is particularly important because, as the *Vaquero* court explained, commission-based
18 compensation plans discourage employees from taking rest breaks. Plaintiffs also alleged that
19 Defendant failed to provide compliant rest periods to the Aggrieved Employees. Specifically, Plaintiffs
20 alleged that Aggrieved Employees were sometime required to work in excess of four hours without
21 being provided a rest period as a result of their rigorous work schedule, and Defendant's inadequate
22 staffing. Plaintiffs estimated Defendant's total liability under this claim to be approximately
23 \$1,440,950.

24 21. In calculating this number, Plaintiffs took into account 28,819 total pay periods and
25 multiplied this by \$50. In assigning \$50 per rest break violation as the rate when calculating
26 Defendant's exposure under PAGA, Plaintiffs considered a variety of defenses presented by Defendant
27 before, during, and after the mediation and subsequent settlement negotiations, all of which resulted in

1 Plaintiffs discounting the value of their PAGA claims for purposes of this analysis. Specifically,
2 Defendant argued that increased civil penalties for subsequent violations do not apply unless the
3 plaintiff can present evidence that the Labor Commissioner or a court notified the employer that it was
4 in violation of the Labor Code. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355-356,
5 citing *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144; see *Amaral v. Cintas Corp. No. 2*
6 (2008) 163 Cal.App.4th 1157, 1209 [“Until the employer has been notified that it is violating a Labor
7 Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of
8 employees is a ‘violation’ subject to penalties.”].)

9 22. Separately, Defendant argued that courts have considerable discretion to reduce the
10 penalty awards under PAGA. In *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the trial
11 court reduced the maximum PAGA penalty amount by 90%. The Court of Appeal affirmed a judgment
12 after trial which only provided for a PAGA penalty of \$5 per pay period.

13 23. In *Magadia v. Wal-Mart Associates, Inc.* (2019) 384 F.Supp.3d 1058, a federal court
14 reduced PAGA penalties by 66.4%. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal.
15 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%
16 because the court found maximum penalties “unjust” because the employees had suffered no injuries.
17 Some trial courts have even awarded no civil penalties, even when Labor Code violations are
18 established. (See *In re Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (affirming an award of
19 \$0 in PAGA penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016
20 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).)
21 Accordingly, it is unlikely that Plaintiffs would recover full penalty amounts even if they prevailed in
22 establishing the underlying Labor Code violations. Plaintiffs are not aware of any Court in California
23 that has awarded the full \$100 per pay period rate, let alone the subsequent rate of \$200 per pay period.

24 24. PAGA provides penalty amounts “[f]or all provisions of this code **except those for which**
25 **a civil penalty is specifically provided.**” (Cal. Lab. Code § 2699(f).) Pursuant to California Labor
26 Code section 558(a)(1), an employer is subject to a penalty of \$50 for violations of a Labor Code section
27 regulating hours and days of work, including meal period and rest period violations. Accordingly,
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1 because section 558(a)(1) specifically provides for a civil penalty, Plaintiffs used a \$50 penalty per
2 violation for the meal and rest break claims. Moreover, in assigning \$50 per violation as the rate when
3 calculating Defendant's exposure under PAGA, Plaintiffs also considered a variety of issues and
4 defenses related to Defendant's liability and related to the scope of employees affected by the various
5 claims. These considerations were also an important factor in Plaintiffs' discounted valuation.
6 Specifically, Defendant maintains that Plaintiffs cannot demonstrate the ability to pursue a statewide
7 representative action on this claim for all of the Aggrieved Employees that worked pursuant to this
8 compensation structure. In particular, the group of Aggrieved Employees is comprised of individuals
9 that worked at ten separate locations, and Defendant does not believe that Plaintiffs can demonstrate
10 the ability to pursue this claim on behalf of employees at nine of the California locations at which
11 Plaintiffs did not work. Moreover, Defendant believes that determining which employees were paid
12 either their hourly rate or their commissions each pay period would create an individualized inquiry not
13 well-suited for a PAGA action.

14 25. Defendant maintains that its employees are not compensated via a commission-only plan.
15 Under the theory that all Aggrieved Employees were paid an hourly wage, Plaintiffs allege that
16 Defendant is liable for its failure to properly calculate the regular rate of pay for purposes of paying
17 overtime, sick pay, and meal period premiums. Defendant maintains that its method for calculating
18 employees' regular rate of pay is proper, pursuant to an unpublished Ninth Circuit decision, *Bowen v.*
19 *Target Corp.*, No. 21-56136, 2022 WL 16570815, at *2 (9th Cir. Nov. 1, 2022).

20 26. In light of the defenses raised by Defendant related to their calculation of the regular rate
21 of pay, supported by a recent Ninth Circuit decision, Plaintiffs have discounted the value of this claim
22 by 50%. Taking into account this discount, Plaintiffs estimate Defendant's total liability pursuant to
23 this claim to be approximately \$1,638,150. This number was calculated using 32,763 pay periods and
24 a rate of \$100 per violation.

25 27. Plaintiffs allege Defendant failed to provide meal periods, provided late meal periods,
26 and provided short meal periods, in violation of California law. Plaintiffs further allege that Defendant
27 maintained improper written policies, which failed to notify California employees of their right to take
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1 a meal break before the end of their fifth hour of work, their right to take a second meal period if they
2 work more than 10 hours, or their right to one meal period premium per day for each day on which
3 compliant meal periods are not offered by Defendant. In reviewing the data provided by Defendant,
4 Plaintiffs' expert noted that on average, breaks were late, short or missed in approximately 66.5% of
5 pay periods. Moreover, while Defendant paid meal period premiums, Plaintiffs allege that it did so in
6 less than 2% of all instances in which a meal period was non-compliant.

7 28. Defendant raised a number of defenses to this claim. Namely, Defendant maintains that
8 it is not required to "police" meal breaks under the law, and that evidence that an employer knew that
9 employees worked during breaks does not, standing alone, establish liability. *See Brinker v. Sup. Ct.*,
10 53 Cal.4th 1004, 1040 (2012). Quoting *Brinker*, Defendant maintains that "employees cannot
11 manipulate the flexibility granted them by employers to use their breaks as they see fit to generate such
12 liability." *Id.* Accordingly, per Defendant, the Aggrieved Employees' timesheets that appear to show a
13 missed, short or late break is not sufficient evidence to demonstrate that a failure to take a timely or
14 compliant break was the result of some *affirmative conduct* by Defendant that *forced* employees to
15 *forego* their breaks, nor do they indicate whether or not the opportunity to take a timely, 30-minute meal
16 break was actually provided. Defendant also argues that it had well-established policies and procedures,
17 that it instructs employees to utilize reporting procedures if a meal period is missed, late, or short, and
18 moreover that this process became automated in May 2022. Defendant argues that Plaintiffs cannot
19 proffer any substantial and concrete contravention of its established policies.

20 29. Taking into account the defenses raised by Defendant, Plaintiffs have discounted the
21 value of this claim by 50%. Plaintiffs estimate Defendant's total liability pursuant to this claim to be
22 approximately \$1,456,200. This calculation is based on 58,248 workweeks, and a rate of \$50 per
23 violation. The \$50 rate was used in this calculation for the same reasons as detailed above, in section
24 IV(A)(1).

25 30. Plaintiffs further alleged that as a result of Defendant's failure to pay employees for all
26 time worked, failure to pay employees at the correct regular rate of pay for meal period premiums,
27 overtime and sick pay, and failure to pay all premiums owed, Plaintiffs and the Aggrieved Employees

1 are entitled to waiting time penalties. Defendant argues that this claim has no value because Plaintiffs
2 have no evidence of willfulness for assessing liability – i.e., that Defendant intentionally failed to pay
3 any wages of any kind and/or failed to provide and authorize and permit compliant meal and rest
4 periods, respectively. At best, Defendant believes that “mini-trials” would be required for each allegedly
5 aggrieved employee to determine whether a final wage violation occurred, including whether Defendant
6 acted willfully and whether there is a good faith dispute that wages are due. Defendant also argued that
7 a good faith dispute that any wages are due is an affirmative defense that will preclude imposition of
8 waiting time penalties under Labor Code section 203. Per Defendant, there is a good faith dispute here
9 as to whether any unpaid wages are due.

10 31. In light of the arguments raised by Defendant, Plaintiffs discounted Defendant’s total
11 estimated liability here by 50%, to \$69,450.

12 32. This number was calculated by taking into account 1,389 former employees in the PAGA
13 period, multiplying this by \$100 per violation, and assuming each of the 1,389 former employees
14 incurred one violation.

15 33. Plaintiffs allege that they and other sales associates frequently delivered orders to
16 customers’ home and offices using their personal vehicles, and used their personal cell phones for
17 business purposes. Plaintiffs allege that they were not reimbursed mileage or for personal cell phone
18 usage by Defendant. Defendant maintains that it had proper policies and procedures in place to
19 reimburse employees for personal cell phone usage and milage associated with the use of their personal
20 vehicles, however employees first had to alert Defendant and request such reimbursement. No
21 reimbursement was triggered, per Defendant, unless and until Defendant was put on notice of the
22 expense incurred. In light of this defense, Plaintiffs discounted Defendant’s total estimate liability here
23 by 70%, to \$433,803. This number was calculated by taking an estimated 14,460 pay periods and
24 multiplying it by a \$100 violation rate.

25 34. Plaintiff Maboudi alleged that they and other Aggrieved Employees worked off the clock
26 when undergoing bag searches required by Defendant. Per Plaintiff Maboudi, the amount of time she
27 would have to wait after clocking out, in order to have her bag searched, varied depending on how busy
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1 the sales floor was. At mediation, Defendant presented evidence of its policies and procedures related
2 to bag checks, including a comprehensive explanation of where the bag check locations were relative
3 to where time clocks were located. Per Defendant, it is its policy and practice for employees to clock
4 out after undergoing a bag check, and moreover, that to complete these tasks in the reverse order, while
5 not impossible, would require employees to walk to from the center of the stores the exits, scan their
6 employee badge to clock out, then walk *back* into the center of the stores, in order to undergo a bag
7 check. Per Defendant, such behavior is not only against their policy, but wholly illogical. Plaintiffs
8 also alleged that Aggrieved Employees worked off-the-clock in responding to communications from
9 Defendant's customers. Defendant denies requiring any such work, and notes that employees were
10 aware of its policy prohibiting off-the-clock work and had sufficient control over their schedules to
11 simply clock out after they had completed their work. Moreover, Defendant maintains that it is the
12 responsibility of employees to alert Defendant of any work completed when not clocked in, in order to
13 be compensated for such. In light of the defenses raised by Defendant, Plaintiffs discounted this claim
14 by 75%, to \$2,190,925. This number was calculated by taking a 75% discount of \$8,763,300, a number
15 that represents a \$100 violation for each Aggrieved Employee, during each pay period worked.

16 35. Plaintiffs alleged that when Aggrieved Employees missed meal and rest breaks, or were
17 paid inaccurate missed meal and rest period premiums, or were paid non-discretionary incentive and/or
18 bonus compensation, or were not paid for all hours worked, Defendant also failed to provide them with
19 complete and accurate wage statements, in violation of Labor Code 226. As this claim was wholly
20 derivative of the other claims asserted by Plaintiff, Defendant maintains that any such penalties
21 associated with this claim would constitute improper "stacking". Plaintiffs have not included penalties
22 under Labor Code 226 into their calculation, as this claim is derivative of the other claims alleged.

23 36. In light of the above, the Gross Settlement Amount is approximately 24% of Defendant's
24 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of
25 PAGA penalties through continued litigation.

26 37. Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the
27 litigation because it fails to account for the risks of continued litigation including, but not limited to,

1 Defendant's defenses. *See, Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14
2 (C.D. Cal. January 18, 2018). For instance, Defendant contended that Plaintiffs' PAGA claims could
3 potentially be wiped out in the light of the United States Supreme Court decision in *Viking River Cruises*
4 *v. Moriana*, (2022) 142 S.Ct. 1906.

5 38. In *Viking River*, the U.S. Supreme Court held that PAGA claims are preempted by the
6 Federal Arbitration Act, where, as here, arbitration agreements were signed by the employees. This
7 posed a very significant risk to Plaintiffs' case which was ultimately realized. *See Viking River Cruises*
8 *v. Moriana*, (2022) 142 S.Ct. 1906. Defendant produced arbitration agreements for both Plaintiff
9 Maboudi and Plaintiff Masielo. Were Defendant to compel Plaintiffs' individual PAGA claims to
10 arbitration, Plaintiffs risk losing their standing to assert representative PAGA claims on behalf of the
11 Aggrieved Employees.

12 39. Second, Defendant argued that it can only be assessed civil penalties for actual violations
13 of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiffs
14 would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice,*
15 *Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a
16 plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation
17 of the Labor Code by the defendant."].) To do this, Plaintiffs would need to prove each Aggrieved
18 Employee was subject to the alleged Labor Code violation, which would be difficult to do, since
19 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in this
20 action.

21 40. Thus, Defendant contended that Plaintiffs would be required to "prove Labor Code
22 violations with respect to each and every individual on whose behalf Plaintiffs seek to recover civil
23 penalties under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar.
24 2, 2009). When "determining whether the employer committed Labor Code violations with respect to
25 each employee" is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off.*
26 *Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021).

1 41. Third, Defendant contended that PAGA actions with numerous employees, many
2 locations, and different types of employees are not manageable and may be dismissed on that basis. *See*,
3 *Wesson v. Staples the Office Superstore*, (2021) 68 Cal.App.5th 746 (holding that courts can dismiss
4 PAGA claims if significant variation exists among aggrieved employees, who have unique factual
5 situations) *see also*, *Ortiz v. CVS Caremark Corp.* (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 36833
6 (dismissing PAGA claim as unmanageable because “a multitude of individualized assessments would
7 be necessary”); *Lifty v. Merrill Lynch & Co.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 160448 (striking
8 PAGA claim as unmanageable because “individualized issues predominate in this action” and a
9 “multitude of individualized assessments would be necessary”); *Amiri v. Cox Communs. Cal., LLC*
10 (C.D. Cal.) 272 F.Supp.3d 1187, 1194 (striking PAGA claim as unmanageable). Here, with over 1,000
11 Aggrieved Employees working in different types of jobs, Defendant asserted that Plaintiffs’ theories
12 were unmanageable. *Cf. Estrada v. Royalty Carpet Mills, Inc.*, (Cal.App. 4th Dist. March 30, 2022)
13 (disagreeing with *Wesson* and creating a split among the Courts of Appeal on whether manageability is
14 a prerequisite to bringing a PAGA claim).

15 42. Fourth, a ballot initiative to eliminate PAGA has qualified for the 2024 ballot.
16 See [https://news.ballotpedia.org/2022/07/26/california-ballot-initiative-to-repeal-paga-qualifies-for-](https://news.ballotpedia.org/2022/07/26/california-ballot-initiative-to-repeal-paga-qualifies-for-2024-ballot/)
17 [2024-ballot/](https://news.ballotpedia.org/2022/07/26/california-ballot-initiative-to-repeal-paga-qualifies-for-2024-ballot/). If this initiative passes, it will effectively repeal PAGA by taking away the ability to pursue
18 civil penalties via a representative action. Plaintiffs view this initiative as a significant additional risk
19 due to the potential limitation on their ability to recover penalties against Defendant should litigation
20 continue.

21 43. Fifth, Defendant contends that both Plaintiffs signed legally binding arbitration
22 agreements that require them to arbitrate their individual PAGA claims in order to determine whether
23 they have standing to move forward with pursuing PAGA claims on behalf of the Aggrieved
24 Employees. Individual arbitrations would pose, at best, a significant delay in this litigation and at worst,
25 an impediment that could undermine Plaintiffs’ PAGA suit.

26 44. Finally, the maximum penalty figure does not consider that Courts have complete
27 discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if,
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1 based on the facts and circumstances of the particular case, to do otherwise would result in an award
2 that is unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, as noted
3 above, Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g.*
4 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th at 529 (reducing PAGA penalties to \$5 per pay period;
5 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly
6 took the circumstances proffered by Starbucks into consideration when it imposed the penalty ... only
7 \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778, 788 (2018), review
8 granted on other grounds (noting that the trial court “exercised its discretion to reduce the [PAGA]
9 penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of
10 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011 WL 7563047, *4 (C.D. Cal.
11 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs’
12 section 226 claims from \$2,800,000 to \$500,000 because the employees suffered no injuries as a result
13 of the erroneous wage statements and made no complaints about the errors or omissions in the wage
14 statements, thus reducing the maximum penalty by 82%); *see also, Gola v. University of San Francisco*,
15 San Francisco Superior Court Case No. CGC-18-5655018, Proposed Statement of Decision, dated July
16 21, 2020, Judge Curtis A. Karnow of San Francisco Complex (concluding after a full-blown bench trial
17 that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount
18 obtained by Plaintiffs’ Counsel is reasonable in light Defendant’s arguments. Further, the adverse
19 decisions in *Viking River Cruises* and *Wesson* pose very significant, and even fatal, risk to Plaintiffs’
20 case.

21 45. Defendant’s substantial compliance could also operate to prevent the imposition of
22 PAGA penalties.

23 46. The LWDA has been provided notice of this motion and the PAGA settlement, and the
24 decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
25 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
26 protect its own rights.

27 **IV. THE ATTORNEYS’ FEES and EXPENSES ARE FAIR AND REASONABLE**

1 47. Plaintiffs' Counsel seeks approval of Attorneys' Fees in the amount of \$583,333.33 (one-
2 third of the Gross Settlement Amount) and Attorneys' Expenses not to exceed \$35,000.00² for
3 reimbursement of actually incurred litigation expenses. PAGA does not have any requirements for
4 reviewing attorneys' fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in this
5 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
6 review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage
7 and hour counsel.

8 48. The requested Attorneys' Fee of \$583,333.33 and reimbursement of Attorneys' Expenses
9 of up to \$35,000.00 is fair, reasonable, and justified by the result achieved.

10 49. Plaintiffs' Counsel negotiated a recovery of \$1,750,000, and this result justifies the
11 requested fees equal to one third of this recovery. This percentage is within the standard contingent
12 recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme
13 Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case was brought,
14 the result was far from certain. Defendant's defenses to the merits of the case created difficulties with
15 proof and complex legal issues for Plaintiffs' Counsel to overcome. Here, several defenses asserted by
16 Defendant present serious threats to the claims of Plaintiffs and the Aggrieved Employees. Defendant
17 asserted that its employment practices complied with all applicable Labor laws. If successful,
18 Defendant's factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees.
19 While Plaintiffs believe that these defenses could be overcome, Defendant maintains that these defenses
20 have merit and therefore present a serious risk to recovery. The Settlement was possible because, in
21 Plaintiffs' Counsels' eyes, Plaintiffs' Counsel was able to persuade Defendant that there was an
22 appreciable risk that Plaintiffs would prevail on the factual and legal issues underlying liability and
23 overcome difficulties in proof as to monetary relief.

24 50. Further, the fee award is justified by the work performed. Generally, the Ninth Circuit
25 and California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
26

27 ² As detailed *infra*, at the time of filing this motion, Plaintiffs' Counsel incurred \$18,929.71 litigating this matter. Plaintiffs
28 will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at
2 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half*
3 *Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied
4 and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001)
5 (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp.
6 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar);
7 *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund,
8 which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013
9 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76
10 as falling within the "majority" range for risk multipliers).

11 51. Attached hereto as **Exhibit #4** is a true and correct copy of the JCL Law Firm, APC, Time
12 and Billing Journal as of February 8, 2024. The time and billing journal includes time for Managing
13 Attorney Jean-Claude Lapuyade, Esq., Sr. Associate Attorney Monnett De La Torre, Esq, Associate
14 Attorney, Sydney Castillo-Johnson and Paralegal, Tesla Stone. To the best of my knowledge, each
15 entry was made contemporaneously and in the ordinary and usual course of business. The attached
16 Billing Journal shows that the JCL Law Firm, APC billed a total of 359.33 hours for a total of
17 \$163,853.75 successfully litigating this action at rates of \$150-\$175 (paralegal), \$500 Sr. Associate and
18 \$550 (Managing Attorney).

19 52. The JCL Law Firm's rates are comparable to those judicially approved for other
20 plaintiff's firms, such as Baron & Budd (rates ranging from \$775 for the requested partner to \$390-
21 \$630 for non-partners), Western Comden Casselman & Essensten (rates ranging from \$670-\$750 for
22 partners and \$300-\$500 for associates), and Blood Hurst & Rearden (\$510-\$6N95 for partners). See
23 *Aarons v. BMW of North America*, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442, *40-41 (C.D.
24 Cal. Apr. 29, 2014). Other Southern California courts have approved hourly rates in the requested range.
25 See e.g., *Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS 91636, *24 (C.D. Cal. June 28, 2013)
26 (approving hourly rates of \$650 -\$800 for senior attorneys in consumer class action); *Parkinson v.*
27 *Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010)(approving hourly rates between

1 \$445 and \$675); *Faigman v. AT&T Mobility, LLC*, 2011 U.S. Dist. LEXIS 15825, *2 (N.D. Cal. Feb.
2 15, 2011)(Approving hourly rates of \$650 an hour for partners and \$500 for associates); *Richard v.*
3 *Ameri-Force Mgmt. Servs., Inc.*, No 37-2008-00096019 (San Diego Superior Court, August 27,
4 2010)(\$695 to \$750 an hour for partners and \$495 for associates); *Barrera v. Gamestop*, No. CV 09-
5 1399 (C.D. Cal. Nov. 29, 2010)(\$700 for partners and \$475 for associates); *Anderson v. Nextel Retail*
6 *Stores, LLC*, No. CV 07-4480 (C.D. Cal. June 20, 2010)(\$655- \$750 for partners and \$300 – 515 for
7 associates); *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Sup. Ct.) (approving 2012
8 partner rates between \$550 and \$850 per hour); and *Holoway v. Best Buy Co.*, C-05-5056-PJH
9 (MEJ)(N.D. Cal.)(approving 2011 partner rates between \$825 and \$700, and associates hourly rates
10 between \$355 and \$405 an hour).

11 53. Moreover, JCL Law Firm, APC’s billing rates have been approved multiple times within
12 the last twelve months by California Superior Court judges. (See Exhibit #6.)

13 54. Additionally, the attorneys and staff at co-counsel the Zakay Law Group, APLC (“ZLG”),
14 billed \$124,217.00 for 243.80 hours successfully litigating this action. A true and accurate copy of the
15 ZLG time and billing entries is attached to the Declaration of Shani O. Zakay, Esq. filed concurrently
16 herewith.

17 55. Collectively, Plaintiffs’ Counsel spent a total of 603.13 hours successfully litigating this
18 matter for a total combined loadstar of \$288,070.75. Thus, the Attorneys’ Fee request is equal to Class
19 Counsel’s loadstar with a modest 2.0 multiplier.

20 56. Class Counsel’s loadstar is summarized by firm below:

21

<u>FIRM</u>	<u>Hours</u>	<u>Total</u>
JCL Law Firm, APC	359.33	\$163, 853.75
ZLG	243.80	\$124,217.00
Total	603.13	\$288,070.75

22
23
24
25

26 V. THE ATTORNEYS’ EXPENSES SHOULD BE APPROVED
27
28

57. Prior to incurring costs for filing of this motion, Plaintiffs' Counsel collectively expended \$18,929.71 prosecuting this action (JCL Law Firm, APC - \$8,605.44, Zakay Law Group, APLC - \$10,324.27).

58. Plaintiffs' Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed.

59. The Chief Executive Officer of Apex Class Action, LLC, Sean Hartranft has provided a Declaration in support of the Administrator's Qualifications. A true and correct copy of the Declaration of Sean Hartranft is attached hereto as **Exhibit #7**

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of February 2024, at San Diego, California.

By: 
Jean-Claude Lapuyade

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement” or “Settlement”) is entered into between Plaintiffs Parastoo Maboudi (“Maboudi”) and Francesco Masiello (“Masiello”) (collectively, the “Plaintiffs”), on their behalf and as proxies on behalf of the California Labor and Workforce Development Agency (the “LWDA”) and as representatives of the “Aggrieved Employees” described herein, on the one hand, and Defendant The Neiman Marcus Group LLC (“NMG” or Defendant”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.”

DEFINITIONS

A. Definition of “Aggrieved Employees” and “Settlement Period”

1. “Aggrieved Employees” shall mean all persons who were employed in an hourly-paid, non-exempt role by Defendant at any time from October 8, 2020 through October 30, 2023.

2. “Settlement Period” means the inclusive time period from October 8, 2020 through October 30, 2023.

B. Additional Definitions

When used in this Agreement, along with the specified terms set forth above and elsewhere in this Agreement, the following terms have the meanings specified below:

3. “PAGA Settlement Amount” means \$1,750,000, less Court-approved attorneys’ fees and litigation costs, and final costs of settlement administration, 75% of which will be distributed to the LWDA and 25% of which will be distributed to the Aggrieved Employees pursuant to the methodology described below.

4. “Court” means the Superior Court of the State of California for the County of Santa Clara.

5. “Effective Date” means 65 days after service of notice of entry of the Court’s Order approving this Settlement and judgment thereon, or if an appeal is taken from any aspect of the Court’s Order regarding approval of this Agreement and/or the judgment entered thereon, then 21 days after the later of either (i) the appeal being withdrawn or (ii) the exhaustion of all available

appellate review and an appellate decision affirming the Order granting approval of the Settlement or judgment thereon becoming final and not subject to further appellate review.

6. “Gross Settlement Fund” means One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00), which is the total maximum sum that Defendant has agreed to pay to settle the Lawsuit in accordance with the terms of this Agreement. Aside from an individual settlement amount payable to Plaintiff for a general release of her individual claims covered in a separate settlement agreement, and except as may be applicable pursuant to the terms of Paragraph 34 of this Agreement, in no event will Defendant be required to pay more than this amount under the terms of this Agreement including but not limited to governmental and other penalties payments (including to the LWDA as set forth below), if any, settlement administration fees and costs, and attorneys’ fees and costs. None of the Gross Settlement Fund will be payable by Defendant prior to approval by the Court of the settlement and the occurrence of all conditions precedent as set forth in this Settlement Agreement as approved by the Court.

7. “Labor Code” shall mean the California Labor Code.

8. “Lawsuit” shall mean the civil action styled as *Parastoo Maboudi, an individual, in her representative capacity on behalf of the State of California and fellow Aggrieved Employees v. The Neiman Marcus Group, LLC, a Delaware Limited Liability Company; and DOES 1 through 50, Inclusive*, filed on December 15, 2021 in Santa Clara County Superior Court, Case No. 21CV391973.

9. “PAGA” shall mean the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

10. “Plaintiffs” or “Named Plaintiffs” shall refer to Plaintiffs Parastoo Maboudi and Francesco Masiello.

11. “Plaintiffs’ Counsel” means Shani O. Zakay, Esq. and Jackland K. Hom, Esq. of Zakay Law Group, APLC, and Jean-Claude Lapuyade, Esq.. As set forth below, Plaintiffs’ Counsel may apply to the Court for an award to be paid from the Gross Settlement Fund of attorneys’ fees and costs and expenses incurred in connection with the prosecution of this matter,

and all of the work remaining to be performed by Plaintiffs' Counsel in documenting the Settlement, securing Court approval of the Settlement (including all related appellate work, if any), carrying out their duties to see that the Settlement is fairly administered and implemented, and obtaining dismissal of the action.

12. The "Released Claims" means any claim for civil penalties under the PAGA and all other related remedies available under the PAGA for all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, interest, costs, expenses, attorneys' fees, damages, obligations or liabilities of any and every kind recoverable under the PAGA, contingent or accrued, that are, were or reasonably could have been alleged or asserted based upon the facts and/or theories alleged in the Lawsuit (including the First Amended Complaint to be filed as a condition of this settlement), and/or in any notice provided pursuant to PAGA by Maboudi or Masiello to the LWDA and Defendant (including, without limitation, in Maboudi's October 8, 2021 PAGA notice letter and Masiello's May 24, 2023 PAGA notice letter, respectively), arising out of, based on or related to any violation of Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 and 2804 that occurred, arose or accrued at any time during the Settlement Period.

13. "Released Parties" means Defendant The Neiman Marcus Group LLC and each of its affiliates, parent companies, subsidiaries, and including but not limited, shareholders, officers, officials, partners, directors, members, owners, servants, exempt, managerial or supervisory employees, employers, agents, contractors, attorneys, insurers, predecessors, representatives, accountants, executors, personal representatives, successors and assigns, past, present, and future, and each and all of their respective officers, partners, directors, members, owners, servants, agents, shareholders, employees, employers, agents, contractors, representatives, executors, personal representatives, accountants, insurers, attorneys, and any employee benefit plans of any nature and the respective trustees, administrators, sponsors, fiduciaries, successors, agents and employees of all such plans, predecessors, successors and assigns, past, present, and future, and all persons

acting under, by, through, or in concert with any of them.

14. “Claims Administrator” means APEX Class Action Administrators, LLC, 18 Technology Drive, Suite 164, Irvine California 92618, Tel: 1-800-355-0700; Fac: 1-949-878-3536, which is a qualified third-party settlement administrator retained by the Plaintiffs’ Counsel to issue checks, handle all tax reporting, issue appropriate tax forms to Plaintiffs, Plaintiffs’ Counsel, and all Aggrieved Employees, and such other related tasks as the Parties may request. The Claims Administrator’s duties of administration shall include, without limitation, receiving and updating through normal and customary procedures the list of Aggrieved Employees to be produced by Defendant, so that it is updated prior to the Notice being mailed, printing and mailing the Court approved Notice of Settlement, performing necessary additional skip traces on Notices and/or checks returned as undeliverable, calculating Aggrieved Employees’ shares of the Settlement Amount, preparing and mailing of settlement checks, responding to Aggrieved Employees’ inquiries as appropriate, preparing any appropriate tax forms in connection with the settlement payments and remitting those forms and any required payments to the appropriate governmental agencies, and generally performing all normal and customary duties associated with the administration of such settlements. All administration fees for the Claims Administrator’s services will be paid out of the Gross Settlement Fund.

BACKGROUND AND FACTUAL RECITALS

15. On October 8, 2021, Maboudi through her attorneys, sent a letter via online submission to the LWDA and Defendant, respectively, providing notice of alleged violations of the Labor Code, including for alleged unpaid minimum and overtime wages, meal and rest break violations, unreimbursed business expenses, wage statement violations, final pay violations, and unpaid sick time allegedly in violation of Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 and 2804. The LWDA elected not to investigate the alleged violations. Accordingly, by operation of law (Labor Code § 2699(a) and § 2699.3(a)), Maboudi was “deputized” to proceed with a civil lawsuit for civil penalties on behalf of herself, the LWDA, and

other allegedly “aggrieved employees.”

16. On December 15, 2021, Maboudi, through her attorneys, and after satisfying her PAGA administrative requirements with the LWDA, commenced a PAGA representative action lawsuit in the Santa Clara County Superior Court, styled as *Parastoo Maboudi, an individual, in her representative capacity on behalf of the State of California and fellow Aggrieved Employees v. The Neiman Marcus Group, LLC, a Delaware Limited Liability Company; and DOES 1 through 50, Inclusive*, Case No. 21CV391973 against Defendant on behalf of herself, and all other “current and former non-exempt and/or salespersons and/or commission-based California employees” between October 8, 2020 to the present (the “Maboudi Action”). The Maboudi Action sought PAGA penalties for the following alleged Labor Code violations: (1) failure to provide compliant meal periods; (2) failure to provide compliant rest periods; (3) failure to pay minimum and/or regular wages for all hours worked; (4) failure to pay overtime and/or double time wages for all hours worked; (5) failure to maintain true and accurate records; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse employees for required business expenses; (8) failure to properly pay overtime, double time, meal and/or rest period premiums, and sick pay at the legally-required rate of pay; and (9) failure to pay timely wages during employment and upon termination.

17. On May 24, 2023, Masiello, through his attorneys, sent a letter via online submission and certified mail to the LWDA and Defendant, respectively, providing notice of alleged violations of the Labor Code, including for alleged unpaid minimum and overtime wages, meal and rest break violations, unreimbursed business expenses, wage statement violations, final pay violations, and unpaid sick time allegedly in violation of Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 and 2804 (hereafter “Masiello’s Threatened PAGA Action”). The LWDA elected not to investigate the alleged violations. Accordingly, by operation of law (Labor Code § 2699(a) and § 2699.3(a)), Masiello was “deputized” to proceed with a civil lawsuit for civil penalties on behalf of himself, the LWDA, and other allegedly “aggrieved employees.”

18. On August 1, 2023, the Parties participated in a full-day mediation with private mediator Jeffrey A. Ross. After the exchange of data and materials and extended negotiations, the Parties reached a global settlement of the Lawsuit, including Masiello's Threatened PAGA Action, as well as potential individual claims by Plaintiffs relating to their former employment with Defendant, with such settlement subject to the negotiation, preparation and execution of this Agreement and the Court's approval thereof. As part of this Settlement, the Parties have agreed to file this Agreement and move for settlement approval in the Lawsuit which approval shall concurrently provide for leave to file a First Amended Complaint, in a form to be approved by Defendant and which shall be attached to the settlement approval motion as an exhibit. The First Amended Complaint shall assert, *inter alia*, all of the underlying claims, causes of action, and factual theories pled in the Lawsuit and Masiello's Threatened PAGA Action, and/or in any notices provided pursuant to PAGA by Maboudi and/or Masiello to the LWDA and Defendant (including, without limitation, in Maboudi's October 8, 2021 PAGA notice letter and Masiello's May 24, 2023 PAGA notice letter), which are being settled pursuant to this Agreement, and adding Masiello as a PAGA representative in the Lawsuit. The Parties agreed that in the event the Court does not grant approval of the Settlement, then the First Amended Complaint will be deemed withdrawn ab initio. For purposes of the Settlement only, Defendant will waive any defenses to the timeliness of any PAGA letters sent to the LWDA and any PAGA claims alleged in the First Amended Complaint, and treat all such PAGA claims as running from the earliest possible PAGA limitations period applicable to either Plaintiff.

19. Defendant at all times has denied liability or wrongdoing with respect to Plaintiffs' claims and maintains this position. Nonetheless, Defendant has concluded that further litigation will be protracted and expensive, and would also divert management and employee time. Defendant has taken into account the uncertainty and risks inherent in litigation and has, therefore, concluded that it is desirable that the claims in the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Agreement.

20. The Parties expressly acknowledge that nothing in this Agreement, nor the fact of

the Agreement itself, shall be construed or deemed an admission of liability, culpability, negligence or wrongdoing of any kind by Defendant, nor shall it constitute an admission on behalf of Defendant of any fact or allegations against it. Defendant at all times has denied Plaintiffs' claims and maintains this position.

21. Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in the Lawsuit and Masiello's Threatened PAGA Action have merit. Plaintiffs and Plaintiffs' Counsel, however, recognize and acknowledge the significant expense and length of continued proceedings necessary to prosecute the litigation of the Released Claims against Defendant through trial and through appeals. Plaintiffs and Plaintiffs' Counsel are also mindful of the possible defenses to the Released Claims. After careful consideration and mediation, Plaintiffs and Plaintiffs' Counsel have concluded that it is desirable that the Lawsuit and Masiello's Threatened PAGA Action be settled in the manner and upon the terms and conditions set forth in this Agreement.

22. Defendant contends that there is inherent risk in proceeding with this Lawsuit and Masiello's Threatened PAGA Action based on the current uncertainty of California jurisprudence with respect to the PAGA and the underlying claims. Because Defendant asserts that a majority of aggrieved employees have entered into arbitration agreements with Defendant, and in light of the foregoing and other legal defenses asserted as to the merits of Plaintiffs' claims, the Parties agree that the Settlement set forth herein adequately balances the risk of proceeding with the claims against any potential recovery for the Plaintiffs, LWDA, and the Aggrieved Employees and, therefore, the Agreement represents a fair and just compromise of the Released Claims.

23. It is the desire of the Parties that Plaintiffs shall release fully and completely for the Settlement Period, with respect to Plaintiffs, the LWDA, and all Aggrieved Employees, all of the Released Claims.

24. The Parties and their respective counsel of record deem the Agreement to be fair and reasonable and have arrived at the Agreement in arms-length negotiations taking into account all relevant factors, present or potential.

COURT APPROVAL OF THE AGREEMENT

25. The Parties and their respective counsel shall, in good faith, take all necessary steps to implement this Agreement, any steps that may be requested by the Court relating to the approval of this Agreement as quickly as possible, and shall otherwise use their respective best efforts to obtain Court approval of this Agreement and implement this Agreement. The procedure for obtaining Court approval of this Agreement and implementing this Agreement shall be as set forth below.

26. As soon as practicable after this Agreement has been signed by all parties and their counsel, Plaintiffs shall submit a motion to the Court for approval of this Agreement pursuant to Labor Code § 2699(1). Plaintiffs will request entry of an order that accomplishes the following:

- a. Approves the Agreement;
- b. Provides that Plaintiffs have leave to file the First Amended Complaint as described herein, which shall be deemed to have been generally denied by Defendant, there has not been any tolling of the applicable statute of limitation periods as to any claims that are not Released Claims, and the Court shall retain continuing jurisdiction over the Parties, the LWDA, and the Aggrieved Employees to enforce the Agreement; and
- c. Enters judgment in accordance with the terms of this Agreement.

27. Neither Defendant, nor its counsel, shall oppose Plaintiffs' Motion as set forth in Paragraph 28, including Plaintiffs' Counsel's Request for Attorneys' Fees and Costs, if made in accordance with this Agreement.

28. Plaintiffs' Counsel shall be responsible for ensuring that all required submittals and notifications to the LWDA under PAGA regarding this Settlement are made by Plaintiffs, and that at least the following documents are filed with the Court in anticipation of the approval hearing:

- a. A duly-noticed motion, accompanying memorandum of points and authorities prepared by Plaintiffs' Counsel (and approved by Defendant's counsel), Plaintiffs' proposed amended complaint, and such other pleadings, evidence, or other documents as may be necessary for the Court to approve the Agreement.

- b. A [Proposed] Order and Judgment for the Court's signature (i) to approve this Agreement, (ii) to provide that Plaintiffs have leave to file the amended complaint as described herein and as attached to Plaintiff's motion, the allegations of which shall be deemed to have been generally denied by Defendant, (iii) that there has not been any tolling of the applicable statute of limitation periods as to any claims that are not Released Claims, and the Court shall retain continuing jurisdiction over the Parties, the LWDA, and the Aggrieved Employees to enforce the Agreement; and (iv) to enter judgment consistent with this Agreement.

29. Plaintiffs' Counsel will prepare Plaintiffs' motion for approval of the settlement, and not later than five court days prior to the submission thereof to the Court, they will submit near-final drafts thereof (including the proposed amended complaint, all supporting papers and proposed order and judgment) to counsel for Defendant for their review and comment.

SETTLEMENT CALCULATIONS AND PAYMENTS

30. All amounts paid as part of this Settlement shall be paid out of the Gross Settlement Fund. These amounts shall be, subject to adjustment as set forth in this Agreement, as follows:

- a. Up to one-third of the Gross Settlement Fund), or \$583,333.33 for attorneys' fees to be paid to Plaintiffs' Counsel (or such other amount as the Court approves);
- b. Up to \$35,000 as reimbursement for litigation costs incurred to be paid to Plaintiffs' Counsel (or such other amount as the Court approves);
- c. Up to \$13,500.00 for costs of settlement administration to be paid to the Claims Administrator (or such other amount as the Court approves);
- d. The Net Settlement Amount (\$1,750,000 less approved attorneys' fees, litigation costs, and final administration costs), of which 75% shall be paid to the LWDA and 25% shall be paid to the Aggrieved Employees.
- e. The Parties agree that the Settlement shall not be contingent upon the Court awarding Plaintiffs' Counsel any particular amount for attorneys' fees or costs.

31. In exchange for the releases set forth in this Agreement, and except as may be

applicable pursuant to the terms of Paragraph 34, Defendant shall have no obligation to make any payment whatsoever beyond the Gross Settlement Fund Amount.). Defendant shall pay the Gross Settlement Fund Amount into a Qualified Settlement Fund (“QSF”) established by the Claims Administrator within 10 business days after occurrence of all of the following: (1) the Effective Date, (2) Plaintiffs’ filing of the First Amended Complaint (if the Court requires it to be separately filed), and (3) establishment of the QSF and Defendant being provided wiring instructions for the same.

32. In the event that a lesser sum is awarded for the attorneys’ fees and costs referenced above in Paragraph 30 (a)-(c), the approval by the Court of any such lesser sum(s) shall not be grounds for Plaintiffs’ Counsel and/or Plaintiffs to terminate the Settlement, but such an order shall be appealable by them. In the event that such an appeal is filed, administration of the Settlement shall be stayed pending resolution of the appeal. Thereafter, if after the exhaustion of such appellate review, any additional amounts remain which are distributable to the Aggrieved Employees, the cost of administration of such additional payments will be paid out of such additional amounts, and will not be chargeable to or payable by Defendant. Any amount not awarded in fees and/or costs, but which is not challenged via appeal by Plaintiffs and/or Plaintiffs’ Counsel, shall be added to the Net Settlement Amount and distributed to the LWDA and the Aggrieved Employees in accordance with the terms of this Agreement.

33. Each of the Aggrieved Employees shall be allocated a portion of the 25% share of Net Settlement Amount to be paid to the Aggrieved Employees on a pro-rata basis (the “Aggrieved Employees PAGA Payment”). Each Aggrieved Employee’s Individual PAGA Payment shall be calculated, by multiplying the Aggrieved Employees PAGA Payment by a fraction, the numerator of which is the total number of pay periods in which an Aggrieved Employee received wages for hours worked during the Settlement Period, and the denominator of which is the total aggregate number of pay periods in which all Aggrieved Employees received wages for hours worked during the Settlement Period.

34. For purposes of mediation and reaching resolution, the Aggrieved Employees were

estimated to have received wages for hours worked in a total of 88,000 pay periods during the Settlement Period. Should the number of pay periods for Aggrieved Employees in the Settlement Period increase by more than 10% over 88,000 pay periods (i.e., by more than 8,800 additional pay periods), the GSF will increase proportionally for the number of pay periods over 110% of 88,000. For example, if the total pay periods in the Settlement Period are 115% of 88,000 pay periods, the GSF shall increase by five percent (5%).

35. The Parties are mindful that the total consideration payable hereunder is comprised of a number of separate and distinct claims by Plaintiffs, the Aggrieved Employees, and the LWDA. Accordingly, having considered the matter in detail, having performed their own separate and independent computations and estimation of the amounts potentially awardable to Plaintiffs, the Aggrieved Employees, and the LWDA at trial, and having done the foregoing with complete and satisfactory access to, and advice from, accounting and legal advisors, the Parties mutually consent and agree that the Gross Settlement Fund be apportioned among the various claims in this action as set forth above, as it is a reasonable and arm's length determination of the character of the distribution for all purposes.

36. Within 30 days after the Effective Date, Defendant will provide to the Claims Administrator an Excel spreadsheet including the following information for each Aggrieved Employee. Defendant shall provide for each Aggrieved Employee, his/her: (1) name; (2) last known address, (3) phone number, (4) hire date of record with Defendant, (5) termination date of record with Defendant, (6) Social Security Number, and (7) the number of pay periods in which the employee received wages for hours worked from Defendant during the Settlement Period. This data shall be collectively referred to as the "Database." The Database will be designated as Highly Confidential, Attorneys' Eyes Only, pursuant to a Court-approved Stipulated Protective Order, and provided by Defendant after the Settlement Administrator signs and returns to Defendant's Counsel the Acknowledgment and Agreement to be Bound attached as Exhibit A to such Protective Order. The Database shall not be provided to Plaintiffs or Plaintiffs' counsel, and shall be used only by the Settlement Administrator, and only for purposes of administering the

Settlement as provided for in this Agreement, and the Settlement Administrator shall not disclose the contents thereof except as expressly permitted under this Agreement. By taking on the administration of the Settlement, the Settlement Administrator agrees that it and its employees, agents and representatives are bound by such protective order.

37. Within 15 calendar days following its receipt of the Database, the Settlement Administrator shall disburse the Gross Settlement Fund by (a) sending to the Aggrieved Employees, by U.S. Mail, a check representing their pro-rata share of the 25% of the Net Settlement Amount, based on the formula set forth above in Paragraph 33, along with a copy of the Notice of Settlement Payment (a copy of which is attached hereto as **Exhibit A**); (b) issuing payment to Plaintiffs' Counsel for Plaintiffs' attorneys' fees as approved by the Court up to \$583,333.33 and up to \$35,000 for Plaintiffs' litigation costs as approved by the Court; (c) issuing payment to the LWDA for 75% of the Net Settlement Amount; and (d) issuing payment to the Settlement Administrator for its costs as approved by the Court.

38. In the event that any checks mailed to Aggrieved Employees remain uncashed after the expiration of 180 days, or an envelope mailed to an Aggrieved Employee is returned and no forwarding address can be located for the Aggrieved Employee after reasonable efforts have been made, then any such funds shall be transmitted by the Claims Administrator pursuant to governing California law to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

39. All costs for administration of the settlement, whether foreseen or unforeseen, including, but not limited to, issuing and mailing settlement checks, printing and mailing of a notice to Aggrieved Employees, responding to inquiries from Aggrieved Employees, reasonable efforts to locate Aggrieved Employees, and preparing any required tax returns and tax reports, will be paid from the Gross Settlement Fund. The Claims Administrator shall submit one invoice to Plaintiffs' Counsel and Defendant's counsel and, if within the amount approved by the Court, such invoice shall be deemed approved and paid out of the Gross Settlement Fund.

40. Defendant shall cooperate with and assist the approved Settlement Administrator

as may be reasonably necessary in conjunction with the Settlement Administrator's calculations, issuance, distribution, and reporting of settlement award checks and related taxes. The Settlement Administrator and Defendant will cooperate and coordinate with each other with respect to the calculation, reporting and payment of the settlement, in accordance with all applicable laws and requirements of government taxing authorities.

41. Any unused portion of the amount allocated in Paragraph 41 to settlement administration costs shall be reallocated to the Net Settlement Amount.

ALLOCATION AND TAX TREATMENT

42. The portion of the Net Settlement Amount distributed to each of the Aggrieved Employees will be considered penalties and will be reported by the Settlement Administrator as such to each of the Aggrieved Employees on an IRS Form 1099 or as otherwise required by applicable law.

43. The Parties represent that they have not received, and shall not rely on, advice or representations from the other party or their agents regarding the tax treatment of payments pursuant to this Settlement Agreement under federal, state, or local law. The Claims Administrator must coordinate the calculation and remittance of all payroll taxes, if any, with Defendant to ensure compliance with the requirements of all taxing authorities related to payments made by qualified settlement funds.

44. No amount of any of payments made to Aggrieved Employees under this Settlement Agreement will constitute wages with regard to any employment-related benefit or incentive compensation plan or program previously, now or hereafter offered by or on behalf of Defendant to any of the Aggrieved Employees.

45. Plaintiffs' Counsel will provide a completed IRS Form W-9 and a completed California Form 590 (using the most recent versions of the Form W-9 and the Form 590) and will be issued an IRS Form 1099 by the Settlement Administrator for their attorneys' fees and costs. Plaintiffs will each provide an IRS Form W-9 to the Settlement Administrator if necessary.

RELEASE OF CLAIMS

46. Effective upon payment of the Gross Settlement Fund Amount into the QSF established by the Claims Administrator in accordance with its wire transfer instructions provided to Defendant, Plaintiffs, the LWDA, and all Aggrieved Employees shall, for the entire Settlement Period, be deemed to have fully released and discharged the Released Parties from any and all Released Claims. Beyond the Gross Settlement Fund, and except as may be applicable pursuant to the terms of this Agreement at Paragraph 34, Defendant shall not owe any further monies to Plaintiffs, the LWDA, or the Aggrieved Employees based upon the Released Claims. The release and discharge of the Released Claims is not contingent upon any Aggrieved Employees receiving or negotiating their settlement checks.

47. This settlement is conditioned upon the release by Aggrieved Employees, Plaintiffs and the LWDA as described in Paragraphs 46-47, above, and upon covenants by Plaintiffs, Aggrieved Employees and the LWDA that they will not and cannot participate, unless required by law, in any actions, lawsuits, proceedings, complaints or charges brought individually, by the DLSE, the LWDA, or by any other agency, persons or entity in any court, arbitration or before any administrative body with respect to the claims released as described in Paragraphs 46-47 above, nor will such Aggrieved Employees, Plaintiffs or the LWDA contest or interfere with efforts by Defendant or by any other Released Parties to oppose any attempt to bring such released claims against any of them. Additionally, it is agreed herein that neither injunctive, declaratory or other equitable relief will be ordered by the Court against Defendant in approval of this Settlement, which will otherwise be grounds for Defendant rescinding and terminating this Settlement Agreement.

48. It is expressly agreed that, as part of the Court's approval of this Agreement, it will be confirmed that there has not been any tolling of the applicable statute of limitation periods as to any claims that are not Released Claims.

49. It is agreed that this Settlement does not constitute or effectuate any waiver or limitation of the applicability of any arbitration agreement, or any argument against the

enforcement of any arbitration agreement, entered into between Defendant and its current and former employees, including Plaintiffs and the Aggrieved Employees and Defendant.

VOIDING THE AGREEMENT

50. In the event: (i) the Court does not enter an order approving this Agreement as provided herein; (ii) the Court does not enter judgment as provided herein; (iii) the Effective Date does not occur; or (iv) the settlement set forth in this Agreement does not become final for any other reason, this Agreement shall be null and void *ab initio* and any order, dismissal, judgment or pleading filed with or entered by the Court in furtherance of the Settlement set forth herein (including without limitation the First Amended Complaint) shall be treated as withdrawn or vacated by stipulation of the Parties. In such case, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed. In the event an appeal is filed from any aspect of the Court's order regarding approval of this Agreement prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

MUTUAL FULL COOPERATION

51. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to execution of such documents and to take such other actions as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiffs' Counsel shall, with the assistance and cooperation of Defendant and their counsel, take all necessary steps to secure the Court's approval of this Settlement Agreement.

MISCELLANEOUS PROVISIONS

52. Confidentiality: As set forth in this paragraph, Plaintiffs and Plaintiffs' Counsel

will maintain this settlement as confidential and not publicly disclose the same. Except as otherwise agreed in writing between the Parties, both before and following the execution of this Settlement Agreement by the Parties and their counsel, there will be no direct or indirect comment or publication by Plaintiffs and Plaintiffs' Counsel of the settlement in terms of affirmative or responsive media statements/comments, press releases or conferences, website postings or content, social media postings or content, other Internet postings or content, subscribed email messages, newsletters, disseminated updates, mass mailings, or any other comment or publication to the press, media or public at large. This shall not apply to or limit the public filing of motions or other case materials by Plaintiffs' Counsel in the Lawsuit related to seeking and obtaining Court approval of the proposed settlement and the related awards of attorneys' fees and costs and the other relief set forth in this Settlement Agreement, or to communications between Plaintiffs' Counsel and Plaintiffs or Aggrieved Employees in the Lawsuit, except that prior to the filing of the motion for approval of the Settlement in the Maboudi Action, Plaintiffs' Counsel shall not discuss the settlement with Aggrieved Employees other than the named Plaintiffs. The Parties understand and agree that there may be media coverage of the settlement of the Lawsuit not initiated by Plaintiffs or Plaintiffs' Counsel, directly or indirectly. If contacted, Plaintiffs' Counsel may otherwise state only that the Lawsuit has been settled on terms mutually agreeable to the parties. It is also agreed and understood that the Parties may disclose the settlement to their legal, tax, or accounting advisors, insurance companies, or as required by law, regulatory rules or regulatory requirements. The Parties agree that the Claims Administrator will use U.S. Mail to provide notice and information about the settlement to the Aggrieved Employees. No information about the Action or the settlement may be posted on any of Plaintiffs' counsel's websites except as expressly set forth herein or in the final stipulation of settlement without Defendant's prior written consent.

53. Each Party to Bear Own Costs. Except as specifically provided herein, the Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of or related to this Lawsuit, and will not seek reimbursement

thereof from any Party to this Agreement. However, if an action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to his/its reasonable attorneys' fees and costs.

54. Severability. If any of the above provisions are found null, void, or inoperative, for any reason, the remaining provisions will remain in full force and effect. Notwithstanding, the invalidation in whole or in part of any material term of this Agreement, including but not limited to all the terms and provisions specified in the releases of claims, will invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining provisions will remain in force and effect.

55. Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute any part of this Agreement.

56. No Admission of Liability by the Defendant. Defendant, on behalf of itself and each and all of its respective, parents, subsidiaries, and affiliates, and their respective employees and agents, denies any liability or wrongdoing of any kind associated with the claims being released herein. Defendant contends, among other things, that it has complied at all times with all applicable laws regarding the payment of wages, meal and rest breaks, wage statement requirements, pay timing and final pay requirements, overtime pay, sick pay, maintaining true and accurate records, and reimbursement of business expenses, and asserts that the Aggrieved Employees were properly treated at all times in compliance with applicable laws. Neither this Settlement Agreement nor any exhibit thereto, nor any other document pertaining to the settlement contemplated herein, may be offered in any other case or proceeding as evidence of any admission by Defendant of any liability on any claims for damages or other relief. Any stipulation or admission by Defendant contained herein is made for settlement purposes only.

57. Agreement Jointly Prepared. The Parties and their attorneys have reviewed this Agreement. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, the Parties expressly waive the common-law and statutory rule of

construction that ambiguities should be construed against the drafter of an agreement, and agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

58. Non-Evidentiary Use. Neither the fact of this Agreement, the existence of this Agreement, the terms of this Agreement, nor any order or action pursuant thereto may be referred to, relied upon, cited, or used as evidence by any of the Parties, Aggrieved Employees, or their respective counsel in the Lawsuits or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

59. Amendment or Modification. Unless otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

60. Authorization to Enter Into Agreement. Each individual signing this Agreement warrants that he or she has the authority and is expressly authorized to enter into this Agreement on behalf of the party for which that individual signs.

61. Advice of Counsel. The Parties to this Agreement are represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties to this Agreement agree that it reflects their good faith compromise of the claims raised in this action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

62. Assignment. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiffs' Counsel, or Defendant's Counsel without the express written consent of each Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, the LWDA, and the Aggrieved Employees, and shall not be construed to confer any right or to avail any remedy to any other person.

63. Governing Law. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

64. Entire Agreement. This Agreement, Plaintiffs' individual settlement agreements, and any supplemental written agreement subsequently incorporated constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein. With the exception of any arbitration agreements entered into between Defendant and Plaintiffs or any of the Aggrieved Employees, and the Parties' Memorandum of Understanding, which remain in force and are not superseded hereby, this Agreement, once it is fully executed, supersedes any and all prior agreements between the Parties.

65. Counterparts. This Agreement, and any amendments hereto, may be executed in any number of counterparts (and by facsimile, DocuSign or electronically-transmitted signatures, which shall be deemed to be originals) and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

66. Cooperation. The Parties shall cooperate fully with one another and to use their best efforts to consummate the Agreement and cause the Court to enter an order and judgment as described herein. No Party to this Agreement shall seek to evade his, her or its good faith obligations to seek approval and implementation of the Agreement by virtue of any ruling, order, or other development, whether in the Lawsuits, in any other litigation or otherwise that hereafter might occur and might be deemed to alter the relative strengths of the Parties with respect to any claims or defenses of their relative bargaining power with respect to negotiating.

* * *

EACH OF THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IT IS SO STIPULATED AND AGREED:

DATED: Dec 13, 2023


parastoo maboudi (Dec 13, 2023 09:55 PST)

Parastoo Maboudi

DATED: Dec 15, 2023


Francesco Masiello (Dec 15, 2023 14:55 PST)

Francesco Masiello

DATED: December 20, 2023 | 10:49 AM PST THE NEIMAN MARCUS GROUP LLC

By: 
78F68D77C7D644F...

Its: Vice President, Asst General Counsel

APPROVED AS TO FORM:

DATED: December 20, 2023

MCGUIREWOODS LLP

By: 

Sabrina A. Beldner
Attorneys for Defendant The Neiman Marcus
Group LLC

DATED: Dec. 15, 2023

**JCL LAW FIRM, APC / ZAKAY LAW GROUP,
APLC**

By: 

Jean-Claude Lapuyade, Esq.
Shani O. Zakay, Esq.
Attorneys for Plaintiffs
Parastoo Maboudi and Francesco Masiello

EXHIBIT A

NOTICE OF SETTLEMENT PAYMENT

Parastoo Maboudi v. The Neiman Marcus Group, LLC
(Santa Clara Superior Court Case No. 21CV391973)

[Address Line 1]

[Address Line 2]

[Address Line 3]

[Dear Mr./Ms. _____]:

You are receiving this letter and the accompanying check made payable to you pursuant to a court-approved settlement in the matter of *Maboudi v. The Neiman Marcus Group, LLC*. The check is in the amount of \$ [REDACTED] and is for your share of the “Net Settlement Amount” under the approved settlement agreement in the above-referenced lawsuit. This check is valid for 180 days from the date of issuance, and for tax purposes, an IRS Form 1099 will be issued to you for this payment.

Please read this letter carefully. It explains the matter and how the settlement affects you.

A. Why Am I Receiving This Notice And This Check?

On December 15, 2021, Parastoo Maboudi (“Maboudi”) filed an action against The Neiman Marcus Group LLC (“NMG” or “Defendant”), to solely allege a violation of the California Labor Code Private Attorney General Act (“PAGA”) based on alleged violations of Labor Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 and 2804.5 (the “*Maboudi* Action”). The *Maboudi* Action is pending in Santa Clara Superior Court, Case No. 21CV391973 (hereinafter the, “Lawsuit”).

On _____, and as part of the Court’s Order Granting Approval of the Settlement, the Court approved the filing of a First Amended Complaint in the *Maboudi* Action to add Francesco Masiello (“Masiello”) as a PAGA representative to the *Maboudi* Action. Maboudi and Masiello will hereinafter be referred to collectively as the “Plaintiffs.”

Plaintiffs and Defendant have reached a settlement, and you are eligible to receive a payment from this settlement because one or more wage statements were issued to you by Defendant that included wages for work performed during the Settlement Period (as defined below).

Plaintiffs allege that Defendant violated the California Labor Code by failing to provide compliant meal periods; failing to provide compliant rest periods; failing to pay minimum and/or regular wages; failing to pay overtime and/or double time wages; failing to maintain true and accurate records; failing to provide accurate itemized wage statements; failing to reimburse employees for required business expenses; failing to pay overtime, double time, meal and/or rest period premiums, and sick pay at the legally-required rate of pay; and failing to timely pay wages during employment and upon termination. By statute, the amounts recovered under PAGA must be paid 75% to the state and 25% to the impacted employees.

The individuals impacted by this settlement include all individuals who were employed and worked in an hourly-paid, non-exempt role by Defendant at any time from October 8, 2020 through October 30, 2023 (the “Aggrieved Employees”). According to Defendant’s records, you fall within this definition, and you are therefore receiving this notice and the enclosed check.

Defendant denies Plaintiffs' allegations. Specifically, Defendant maintains that it has complied with all applicable laws in connection with respect to the payment of any type of wages (including, without limitation, minimum wage, overtime/doubletime wages, meal and rest break premium payments and sick pay), meal and rest breaks, wage statement requirements, pay timing and final pay requirements, maintaining true and accurate records, and reimbursement of business expenses, and asserts that the Aggrieved Employees were properly treated at all times in compliance with applicable laws. Defendant therefore disputes that any amounts are owed. **The settlement – and the amount you are receiving – represents a compromise resolution of disputed claims.**

B. How Has The Court Ruled?

The Court has not ruled on the merits of the claims, Defendant's defenses, or any of the contentions of the parties with respect to the PAGA claim being settled. No inferences regarding the merits of the Lawsuit should be drawn from the fact there is a settlement.

Instead, the parties agreed to a settlement, which entails a compromise by both sides. That way, each side avoids the costs, risks and uncertainty of a trial.

C. What Rights Am I Giving Up?

By operation of the court-approved settlement, the Aggrieved Employees are deemed to have fully released and discharged the "Released Parties" from any and all "Released Claims" during the "Settlement Period," which means the inclusive time period from October 8, 2020 through October 30, 2023.

"Released Parties" means Defendant and each of its affiliates, parent companies, subsidiaries, shareholders, officers, officials, partners, directors, members, owners, servants, exempt employees, employers, agents, contractors, attorneys, insurers, predecessors, representatives, accountants, executors, personal representatives, successors and assigns, past, present, and future, and each and all of their respective officers, partners, directors, members, owners, servants, agents, shareholders, employees, employers, agents, contractors, representatives, executors, personal representatives, accountants, insurers, attorneys, and any employee benefit plans of any nature and the respective trustees, administrators, sponsors, fiduciaries, successors, agents and employees of all such plans, predecessors, successors and assigns, past, present, and future, and all persons acting under, by, through, or in concert with any of them.

"Released Claims" means any claim for civil penalties under PAGA and all other related remedies available under PAGA for all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, interest, costs, expenses, attorneys' fees, damages, obligations or liabilities of any and every kind, contingent or accrued, that are, were or reasonably could have been alleged or asserted based upon the facts and/or theories alleged in the pleadings filed in the Lawsuit and/or in any notice provided pursuant to PAGA by Plaintiffs to the LWDA and Defendant, arising out of, based on or related to any violation of Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 and 2804.5 that occurred, arose or accrued at any time during the Settlement Period.

Note: Any valid and enforceable arbitration agreement entered into between you and Defendant remains in full force and effect and is not waived or limited as a result of this settlement.

If you have any questions, you can contact the Claims Administrator (whose contact information is at the top of this letter).

EXHIBIT 2



5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

October 8, 2021

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

THE NEIMAN MARCUS GROUP LLC

c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 3127

c/o CT Corporation System
818 W. 7th Street
Los Angeles, CA 90017

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 3431

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This office represents PARASTOO MABOUDI (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against THE NEIMAN MARCUS GROUP LLC (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from September 2004 to July 2021. Plaintiff was paid on an hourly and commission basis and entitled to legally required meal and rest periods. At all times during her employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Plaintiff further contends that Defendant failed to advise Plaintiff and aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and other aggrieved

employees for the non-productive time associated with their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 110 (2017). Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, sales persons and commission-based employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PARASTOO MABOUDI, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

THE NEIMAN MARCUS GROUP LLC, a
Delaware Limited Liability Company; and
DOES 1 through 50, Inclusive;

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

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6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
 9. UNPAID SICK PAY IN VIOLATION OF CAL. LABOR CODE § 246.

DEMAND FOR JURY TRIAL

Plaintiff PARASTOO MABOUDI (“PLAINTIFF”) an individual, on behalf of herself and all other similarly situated current and former employees alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant THE NEIMAN MARCUS GROUP LLC (“DEFENDANT” and/or “DEFENDANTS”) is a Delaware limited liability company that at all relevant times owns and operates luxury department stores in the County of Santa Clara, California.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANTS, and personally participated in the conduct alleged

1 herein on behalf of the DEFENDANTS with respect to the conduct alleged herein. Consequently, the
2 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
3 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
4 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

5 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
6 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
7 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
8 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
9 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

10 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
11 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
13 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
14 for each underpaid employee.

15 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from
16 September 2004 to July of 2021, paid in part on an hourly and commission basis, and entitled to the
17 legally required meal and rest periods and payment of minimum wages, reimbursement for business
18 expenses, and overtime wages due for all time worked.

19 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
20 DEFENDANTS' current and former non-exempt and/or sales persons and/or commission-based
21 California employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4)
22 years from the date of the filing of this Complaint and ending on a date determined by the Court (the
23 "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
24 Members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the
25 following class definitions before the Court determines whether class certification is appropriate, or
26 thereafter upon leave of Court:

27 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses

1 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
2 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
3 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
4 California Labor Code Sections 226.7(c) and the applicable Industrial Welfare Commission Wage
5 Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation
6 of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to reimburse
7 PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California Labor
8 Code Section 2802, (4) failed to provide accurate itemized wage statements in violation of California
9 Labor Code Sections 226 and 226.3, and (5) failed to pay sick pay at the regular rate of pay in violation
10 of California Labor Code Section 246.

11 9. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair, and
12 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
13 PLAINTIFF and the other members of the CALIFORNIA CLASS.

14 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
15 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
16 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past
17 and current unlawful conduct, and all other appropriate legal and equitable relief.

18 **JURISDICTION AND VENUE**

19 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
21 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
22 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

23 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, sections 395
24 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and DEFENDANTS (i)
25 currently maintain and at all relevant times, maintained offices and facilities in this County and/or
26 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
27 in this County against members of the CALIFORNIA CLASS.

28 **THE CONDUCT**

1 13. In violation of the applicable sections of the California Labor Code and the requirements
2 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
3 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
4 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members
5 of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
6 members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-
7 the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS
8 overtime at the regular rate, failed to compensate PLAINTIFF and other members of the CALIFORNIA
9 CLASS meal and rest premiums at the regular rate, failed to pay PLAINTIFF and other members of
10 the CALIFORNIA CLASS sick pay at the regular rate, and failed to issue to PLAINTIFF and the
11 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
12 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
13 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
14 purposefully avoid the accurate and full payment for all time worked as required by California law
15 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
16 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
17 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

18 **A. Meal Period Violations**

19 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
20 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
21 the time during which an employee is subject to the control of an employer, including all the time the
22 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
23 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying
24 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
25 PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS
26 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
27 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
28 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where

1 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA
2 CLASS Members forfeited minimum wage and overtime wages by regularly working without their
3 time being accurately recorded and without compensation at the applicable minimum wage and
4 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
5 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
6 records.

7 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
8 schedules, being required to assist and advise customers, and DEFENDANTS' inadequate staffing
9 practices, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to
10 take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods.
11 PLAINTIFF and other CALIFORNIA CLASS Members were required from time to time to perform
12 work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving
13 a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
14 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these
15 employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The
16 nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not
17 qualify for limited and narrowly construed "on-duty" meal period exception. When they were provided
18 with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
19 required to remain on duty, on call, and required to maintain cordless communication devices on them
20 during meal periods. Further, PLAINTIFF and other CALIFORNIA CLASS Members were required
21 to respond to communications received on said cordless communication devices during what was
22 supposed to be their duty-free meal periods. PLAINTIFF and other CALIFORNIA CLASS Members
23 therefore forfeited meal breaks without additional compensation and in accordance with
24 DEFENDANTS' strict corporate policy and practice.

25 **B. Rest Period Violations**

26 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
27 CLASS members were also required from time to time to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods as a result of their rigorous work schedule, being required

1 to assist and advise customers, and DEFENDANTS' inadequate staffing. Further, for the same reasons
2 these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
3 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10)
4 minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
5 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
6 more from time to time. When they were provided with rest breaks, PLAINTIFF and other
7 CALIFORNIA CLASS Members were, from time to time, required to remain on duty, on call, and
8 required to maintain cordless communication devices on them during rest periods. Further, PLAINTIFF
9 and other CALIFORNIA CLASS Members were required to respond to communications received on
10 said cordless communication devices during what was supposed to be their duty-free rest periods.
11 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages
12 *in lieu* thereof. As a result of their rigorous work schedules, being required to assist and advise
13 customers, and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
14 Members were from time to time denied their proper rest periods by DEFENDANTS and
15 DEFENDANTS' managers.

16 17. In addition, for those CALIFORNIA CLASS MEMBERS, including PLAINTIFF, who
17 were paid on a commission-based compensation plan, DEFENDANTS failed to compensate
18 PLAINTIFF and CALIFORNIA CLASS MEMBERS for their rest periods as required by the applicable
19 Wage Order and Labor Code. DEFENDANTS did not have a policy or practice which paid for off-
20 duty rest periods to PLAINTIFF and the CALIFORNIA CLASS MEMBERS. As a result,
21 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS MEMBERS with all
22 the legally required paid rest periods is evidenced by DEFENDANT's business records

23 **D. Unreimbursed Business Expenses**

24 18. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally,
25 knowingly, and systematically failed to reimburse and indemnify PLAINTIFF and other
26 CALIFORNIA CLASS Members or required business expenses they incurred in direct consequence of
27 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
28 employers are required to indemnify employees for all expenses incurred in the course and scope of

1 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
3 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
4 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
5 unlawful."

6 19. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
7 CLASS Members were required by DEFENDANTS to use their own personal vehicles and personal
8 cell phones as a result of and in furtherance of their job duties as employees for DEFENDANTS. But
9 for the use of their own personal vehicles and personal cell phones, PLAINTIFF and the members of
10 the CALIFORNIA CLASS could not complete their essential job duties. Notwithstanding,
11 DEFENDANTS did not reimburse or indemnify PLAINTIFF or other CALIFORNIA CLASS
12 Members for the cost associated with the use of their own personal vehicles and personal cell phones
13 for DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
14 were required by DEFENDANTS to use their personal vehicles and personal cell phones for work
15 related issues, including but not limited to, communications for work-related issues and traveling to
16 perform work-related tasks such as transporting merchandise. As a result, in the course of their
17 employment with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS
18 incurred unreimbursed business expenses which included, but were not limited to, costs related to the
19 use of their personal vehicles and personal cell phones, all on behalf of and for the benefit of
20 DEFENDANTS.

21 **E. Wage Statement Violations**

22 20. California Labor Code Section 226 requires an employer to furnish its employees an
23 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
24 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
26 employee and only the last four digits of the employee's social security number or an employee
27 identification number other than a social security number, (8) the name and address of the legal entity
28

1 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

3 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
4 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal
5 and rest period premiums, or were paid non-discretionary incentive and/or bonus compensation, or
6 were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other
7 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show,
8 among other things, the total hours worked and all applicable hourly rates in effect during the pay
9 period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
10 payments or missed meal and rest periods.

11 22. In addition to the violations described above, DEFENDANTS, from time to time, failed
12 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
13 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of
14 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
15 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
16 payroll error due to clerical or inadvertent mistake.

17 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

18 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
19 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
20 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
21 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time
22 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary
23 wages for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock.

24 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
25 and other members of the CALIFORNIA CLASS to perform off-the-clock work, including but not
26 limited to, responding to communications from DEFENDANTS' customers. Further, during the CLASS
27 PERIOD, DEFENDANTS engaged in the practice of requiring PLAINTIFF and other CALIFORNIA
28 CLASS members to perform work off the clock after clocking out in that DEFENDANTS, as a condition

1 of employment, required these employees from time to time to wait and submit to loss prevention
2 inspections after clocking out at the end of each scheduled shift, and if they left the store during off duty
3 meal periods, for which DEFENDANTS did not provide compensation for the time spent waiting for
4 and submitting to DEFENDANTS' loss prevention inspections off the clock. This resulted in
5 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

6 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
7 work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

8 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
9 assignments and employment conditions of PLAINTIFF and the other members of the CALIFORNIA
10 CLASS.

11 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members
12 of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or
13 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
14 all the work they performed, including off-the-clock work.

15 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt
16 employees, subject to the requirements of the California Labor Code.

17 30. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members of
18 the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages owed for the off-
19 the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS
20 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
21 DEFENDANTS' policies and practices also deprived them of overtime pay.

22 31. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
23 the CALIFORNIA CLASS off-the-clock work was compensable under the law.

24 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
25 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
26 assisting customers from home. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF
27 and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable
28 law is evidenced by DEFENDANTS' business records.

1 **G. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

2 33. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to fail
3 to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members for their
4 overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the
5 other CALIFORNIA CLASS Members forfeited wages due to them for working overtime without
6 compensation at the correct overtime, meal and rest period premiums, and sick pay rates.
7 DEFENDANTS' uniform policy and practice not to pay the PLAINTIFF and the CALIFORNIA CLASS
8 the correct overtime rate for all overtime worked, meal and rest period premiums, and sick pay in
9 accordance with applicable law is evidenced by DEFENDANTS' business records.

10 34. State law provides that employees must be paid overtime at one-and-one half times their
11 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were compensated at an
12 hourly rate commission.

13 35. The second component of PLAINTIFF's and other CALIFORNIA CLASS Member's
14 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
15 other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANTS.
16 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus, and/or
17 incentive compensation when the employees met the various performance goals set by DEFENDANTS.
18 Further, DEFENDANTS paid shift differentials to PLAINTIFF and CALIFORNIA CLASS Members.

19 36. However, from time-to-time, when calculating the regular rate of pay, in those pay periods
20 where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime, or were paid meal and/or
21 rest period premiums, and earned this non-discretionary bonus, incentive, or shift differential
22 DEFENDANTS failed to accurately include the non-discretionary bonus compensation and/or incentive
23 and/or shift differential paid as part of the employees' "regular rate of pay" and/or calculated all hours
24 worked rather than just all non-overtime hours worked. Further, when calculating the regular rate of pay
25 in order to pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include
26 the incentive compensation and/or shift differential as part of the employees' "regular rate of pay" for
27 purposes of calculating sick pay. Management and supervisors described the incentive/bonus program to
28 potential and new employees as part of the compensation package. As a matter of law, the incentive

1 compensation and shift differentials received by PLAINTIFF and other CALIFORNIA CLASS Members
2 must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic
3 underpayment of overtime, meal and rests period premiums, and sick pay to PLAINTIFF and other
4 CALIFORNIA CLASS Members by DEFENDANTS.

5 37. As a matter of law, the incentive, commission, and shift differential compensation received
6 by PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated
7 into the “regular rate of pay” for purposes of overtime compensation, meal and rest period premiums,
8 and sick pay. DEFENDANTS’ failure to do so has resulted in DEFENDANTS’ systematic underpayment
9 of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
10 CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid
11 sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the
12 workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually
13 works overtime in that workweek. DEFENDANT’S conduct, as articulated herein, by failing to include
14 the incentive compensation and shift differentials as part of the “regular rate of pay” for purposes of sick
15 pay compensation was in violation of Cal. Lab. Code § 246.

16 38. In violation of the applicable sections of the California Labor Code and the requirements
17 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
18 policy, practice, and procedure, intentionally, and knowingly failed to compensate PLAINTIFF and the
19 CALIFORNIA CLASS at the correct rate of pay for all overtime, meal and rest period premiums, and/or
20 sick pay compensation. This uniform policy and practice of DEFENDANTS is intended to purposefully
21 avoid the payment of the correct overtime, meal and rest period premiums, and/or sick pay compensation
22 as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
23 advantage over competitors who complied with the law. To the extent equitable tolling operates to toll
24 claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
25 accordingly.

26 **H. CLASS ACTION ALLEGATIONS**

27 39. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
28 California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current and former non-

1 exempt and/or sales persons and/or commission-based California employees (“CALIFORNIA CLASS”)
2 during the period beginning four years prior to the filing of the Complaint and ending on a date
3 determined by the Court (“CLASS PERIOD”).

4 40. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
5 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
6 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
7 and rest period policies, failure to separately compensate rest periods, failed to accurately calculate the
8 regular rate of compensation for missed meal and rest period premiums, failed to reimburse for business
9 expenses, failed to compensate for off-the-clock work, failure to provide accurate itemized wage
10 statements, failure to maintain required records, and interest, statutory and civil penalties, attorney’s
11 fees, costs, and expenses.

12 41. The members of the class are so numerous that joinder of all class members is impractical.

13 42. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not
14 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
15 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
16 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and
17 rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage
18 statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to
19 all members of the class and predominate over any questions affecting solely any individual members
20 of the class. Among the questions of law and fact common to the class are:

21 a. Whether DEFENDANTS maintained legally compliant meal period
22 policies and practices;

23 b. Whether DEFENDANTS maintained legally compliant rest period
24 policies and practices;

25 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
26 CALIFORNIA CLASS Members accurate premium payments for missed
27 meal and rest periods;

28 d. Whether DEFENDANTS failed to pay PLAINTIFF and the

CALIFORNIA CLASS Members accurate overtime wages;

e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Member accurate sick pay;

f. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

g. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;

h. Whether DEFENDANTS issued legally compliant wage statements;

i. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

j. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

k. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

43. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

44. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

45. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

46. PLAINTIFF retained able class counsel with extensive experience in class action

1 litigation.

2 47. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
3 of the other CALIFORNIA CLASS Members.

4 48. There is a strong community of interest among PLAINTIFF and the members of the
5 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
6 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

7 49. The questions of law and fact common to the CALIFORNIA CLASS Members
8 predominate over any questions affecting only individual members, including legal and factual issues
9 relating to liability and damages.

10 50. A class action is superior to other available methods for the fair and efficient adjudication
11 of this controversy because joinder of all class members is impractical. Moreover, since the damages
12 suffered by individual members of the class may be relatively small, the expense and burden of
13 individual litigation makes it practically impossible for the members of the class individually to redress
14 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of separate actions by individual
16 members of the CALIFORNIA CLASS will create the risk of:

17 a. Inconsistent or varying adjudications with respect to individual members of the
18 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
19 parties opposing the CALIFORNIA CLASS; and/or,

20 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
21 which would as a practical matter be dispositive of the interests of the other members not
22 party to the adjudication or substantially impair or impeded their ability to protect their
23 interests.

24 51. Class treatment provides manageable judicial treatment calculated to bring an efficient
25 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
26 DEFENDANTS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 52. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 53. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
8 17021.

9 54. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
10 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
11 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

12 Any person who engages, has engaged, or proposes to engage in unfair
13 competition may be enjoined in any court of competent jurisdiction. The
14 court may make such orders or judgments, including the appointment of a
15 receiver, as may be necessary to prevent the use or employment by any
16 person of any practice which constitutes unfair competition, as defined in
this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by
means of such unfair competition.

17 Cal. Bus. & Prof. Code § 17203.

18 55. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
19 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
21 “UCL”), by engaging and continuing to engage in business practices which violates California law,
22 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
23 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
24 1194, 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable
25 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
26 held to constitute unfair competition, including restitution of wages wrongfully withheld.

27 56. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
28 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or

1 substantially injurious to employees, and were without valid justification or utility for which this Court
2 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
3 Professions Code, including restitution of wages wrongfully withheld.

4 57. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
5 in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated
6 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
7 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
8 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
9 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
10 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
11 restitution of wages wrongfully withheld.

12 58. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
13 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
14 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

15 59. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
16 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
17 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
18 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
19 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
20 Labor Code.

21 60. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
22 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period
23 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
24 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

25 61. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA
26 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not
27 timely provided as required by law.

28 62. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the

1 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
2 calculated overtime and missed meal and rest periods premiums.

3 63. By and through the unlawful and unfair business practices described herein,
4 DEFENDANTS has obtained valuable property, money, and services from PLAINTIFF and the other
5 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
6 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
7 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
8 compete against competitors who comply with the law.

9 64. All the acts described herein as violations of, among other things, the Industrial Welfare
10 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
11 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
12 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
13 Bus. & Prof. Code §§ 17200, *et seq.*

14 65. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
15 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
16 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
17 deprived, by means of the above described unlawful and unfair business practices, including earned but
18 unpaid wages for all overtime worked.

19 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
20 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
21 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
22 unfair business practices in the future.

23 67. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
24 and/or adequate remedy at law that will end the unlawful and unfair business practices of
25 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
26 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
27 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
28 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair

business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

68. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

69. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

70. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

71. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

72. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

73. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked or were not accurately compensated for all overtime hours worked.

74. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other

1 CALIFORNIA CLASS Members and denied accurate compensation to PLAINTIFF and the other
2 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
3 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
4 in any workweek.

5 75. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
6 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
7 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
8 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
9 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
10 applicable laws and regulations.

11 76. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
13 all overtime worked.

14 77. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
15 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other
16 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the
17 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude
18 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
19 behalf of herself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
20 negotiable, non-waivable rights provided by the State of California.

21 78. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
22 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
23 wages.

24 79. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
26 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
27 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
28 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime

1 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

2 80. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
3 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
4 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
5 suffer an economic injury in amounts which are presently unknown to them and which will be
6 ascertained according to proof at trial.

7 81. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
8 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
9 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
10 employees for their labor as a matter of uniform company policy, practice and procedure, and
11 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
12 members of the CALIFORNIA CLASS for overtime worked.

13 82. In performing the acts and practices herein alleged in violation of California labor laws,
14 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
15 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,
16 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
17 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
18 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
19 in order to increase company profits at the expense of these employees.

20 83. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
21 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
22 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
23 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
24 determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment,
25 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
26 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
27 herein on behalf of these CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein
28 was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS

Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

84. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members during the CLASS PERIOD.

86. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

87. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

88. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

89. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

90. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members

1 of the CALIFORNIA CLASS in regard to minimum wage pay.

2 91. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
3 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
4 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
5 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
6 Industrial Welfare Commission requirements and other applicable laws and regulations.

7 92. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
9 wage compensation for their time worked for DEFENDANTS.

10 93. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
11 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
12 wages.

13 94. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
14 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
15 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
16 suffer an economic injury in amounts which are presently unknown to them, and which will be
17 ascertained according to proof at trial.

18 95. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
19 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
20 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
21 employees for their labor as a matter of uniform company policy, practice and procedure, and
22 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
23 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

24 96. In performing the acts and practices herein alleged in violation of California labor laws,
25 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
26 them with the requisite compensation, DEFENDANTS acted and continue to act intentionally,
27 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
28 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the

despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

97. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved of all their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a

1 second off-duty meal period in some workdays in which these employees were required by
2 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the
3 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
4 accordance with DEFENDANTS' strict corporate policy and practice.

5 100. DEFENDANTS further violate California Labor Code §§ 226.7 and the applicable IWC
6 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
7 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
8 compensation at each employee's regular rate of compensation for each workday that a meal period was
9 not provided.

10 101. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
11 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
12 and due, interest, penalties, expenses and costs of suit.

13 **FIFTH CAUSE OF ACTION**

14 **For Failure to Provide Required Rest Periods**

15 **[Cal. Lab. Code §§ 226.7 & 512]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 102. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

19 103. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
20 were from time to time required to work in excess of four (4) hours without being provided ten (10)
21 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
22 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
23 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
24 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
25 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
26 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS
28 and DEFENDANTS' managers.

104. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of compensation for each workday that rest period was not provided.

105. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

100. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal vehicles and personal cell phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal vehicles and personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal vehicles and

1 personal cell phones for DEFENDANTS within the course and scope of their employment for
2 DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS
3 are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these
4 expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA
5 CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the
6 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
7 regulations of California.

8 101. PLAINTIFF therefore demands reimbursement on behalf of the members of the
9 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf
10 of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory
11 rate and costs under Cal. Lab. Code § 2802.

12 **SEVENTH CAUSE OF ACTION**

13 **For Failure to Provide Accurate Itemized Statements**

14 **[Cal. Lab. Code §§ 226 and 226.2]**

15 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

16 102. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
17 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

18 103. Cal. Labor Code § 226 provides that an employer must furnish employees with an
19 "accurate itemized" statement in writing showing:

- 20 1. Gross wages earned;
- 21 2. Total hours worked by the employee, except for any employee
22 whose compensation is solely based on a salary and who is exempt from
23 payment of overtime under subdivision (a) of Section 515 or any applicable
24 order of the Industrial Welfare Commission;
- 25 3. The number of piece-rate units earned and any applicable piece rate
26 if the employee is paid on a piece-rate basis;
- 27 4. All deductions, provided that all deductions made on written orders
28 of the employee may be aggregated and shown as one item;

5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid,
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
8. The name and address of the legal entity that is the employer, and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

104. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned; (4) the correct name and address of the legal entity that is the employer; and (5) the last four (4) digits of employee's social security number or an employee identification number all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226(a).

105. Further, DEFENDANTS violated California Labor Code Section 226(a)(6) by failing to provide the inclusive dates of the period for which PLAINTIFF and CALIFORNIA CLASS Members were paid; and DEFENDANTS violated California Labor Code Section 226(a)(8) by failing to provide the name and address of the legal entity that is the employer. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

106. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)

1 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
2 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
3 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
4 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
5 member of the CALIFORNIA CLASS herein.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO PAY WAGES WHEN DUE**

8 **(Cal Lab. Code §§201, 202, 203)**

9 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

10 107. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

12 108. Cal. Lab. Code § 200 provides that:

13 As used in this article: (a) "Wages" includes all amounts for labor
14 performed by employees of every description, whether the amount
15 is fixed or ascertained by the standard of time, task, piece,
16 Commission basis, or other method of calculation. (b) "Labor"
17 includes labor, work, or service whether rendered or performed
under contract, subcontract, partnership, station plan, or other
agreement if the labor to be paid for is performed personally by the
person demanding payment.

18 109. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an
19 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

20 110. Cal. Lab. Code § 202 provides, in relevant part, that:

21 If an employee not having a written contract for a definite period
22 quits his or her employment, his or her wages shall become due and
23 payable not later than 72 hours thereafter, unless the employee has
24 given 72 hours previous notice of his or her intention to quit, in
25 which case the employee is entitled to his or her wages at the time
26 of quitting. Notwithstanding any other provision of law, an
employee who quits without providing a 72-hour notice shall be
entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute
the date of payment for purposes of the requirement to provide
payment within 72 hours of the notice of quitting.

27 111. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
28 employment contract.

1 112. Cal. Lab. Code § 203 provides:

2 If an employer willfully fails to pay, without abatement or reduction,
3 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
4 of an employee who is discharged or who quits, the wages of the
5 employee shall continue as a penalty from the due date thereof at the
6 same rate until paid or until an action therefor is commenced; but
7 the wages shall not continue for more than 30 days.

8 113. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated,
9 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
10 breaks, as required by law.

11 114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members
12 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty (30) days of
13 pay as penalty for not paying all wages due at time of termination for all employees who terminated
14 employment during the CLASS PERIOD and demands an accounting and payment of all wages due,
15 plus interest and statutory costs as allowed by law.

16 **NINTH CAUSE OF ACTION**

17 **UNPAID SICK PAY**

18 **(Cal. Lab. Code § 246, *et seq.*)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANTS)**

20 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

22 116. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt
23 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
24 the employee uses paid sick time, whether or not the employee actually works overtime in that
25 workweek.”

26 117. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA
27 CLASS were compensated at an hourly rate plus bonuses. As a matter of law, the bonus compensation
28 received by PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the
“regular rate of pay.”

1 118. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF
2 and other members of the CALIFORNIA CLASS earned hourly compensation and non-discretionary
3 incentive compensation, and took paid sick time, DEFENDANT failed to properly calculate the regular
4 rate of pay for purposes of compensating paid sick time by omitting non-discretionary incentive pay
5 from the regular rate of pay.

6 119. DEFENDANT's uniform policy and practice of omitting non-discretionary bonuses from
7 the regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay
8 wages to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other
9 members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick
10 pay wages, according to proof, interest, statutory costs, as well as the assessment of any statutory
11 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
12 applicable statutes. To the extent sick pay is determined to be owed to other members of the
13 CALIFORNIA CLASS who have terminated their employment, DEFENDANT's conduct also violates
14 Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
15 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of
16 the CALIFORNIA CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and
17 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are entitled
18 to seek and recover statutory costs.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

21 1. On behalf of the CALIFORNIA CLASS:

22 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
23 a class action pursuant to Cal. Code of Civ. Proc. § 382;

24 B) An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

26 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
27 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
28

1 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
2 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
3 members of the CALIFORNIA CLASS.

4 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth
5 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
6 Proc. § 382;

7 1. Compensatory damages, according to proof at trial, including compensatory
8 damages for minimum wage compensation, overtime compensation, sick pay,
9 unreimbursed business expenses due PLAINTIFF and the other members of the
10 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
11 interest thereon at the statutory rate;

12 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
13 which a violation occurs and one hundred dollars (\$100) per each member of the
14 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
15 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of
16 Cal. Lab. Code § 226;

17 3. Meal and rest period compensation pursuant to California Labor Code Section
18 226.7, 512 and the applicable IWC Wage Order;

19 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
20 1197; and

21 5. The wages of all terminated employees as a penalty from the due date thereof at the
22 same rate until paid or until an action therefore is commenced, in accordance with Cal.
23 Lab. Code § 203.

24 2. On all claims:

25 A) An award of interest, including prejudgment interest at the legal rate;

26 B) Such other and further relief as the Court deems just and equitable; and,

27 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
28 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

1 Dated: September [REDACTED], 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

3 By: 
4 Jean-Claude Lapuyade
5 Attorneys for PLAINTIFF

6 **DEMAND FOR JURY TRIAL**

7 PLAINTIFF demands a jury trial on all issues triable to a jury.
8

9 Dated: September [REDACTED], 2021

10 Respectfully Submitted,
JCL LAW FIRM, A.P.C.

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF
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ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 42401

May 24, 2023

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

THE NEIMAN MARCUS GROUP LLC

c/o Registered Agent
330 N Brand Blvd
Glendale, CA 91203

Via Certified Mail with Return Receipt No. 9589 0710 5270 0114 2242 52

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This office represents FRANCESCO MASIELLO (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against THE NEIMAN MARCUS GROUP LLC (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from February 2022 to September 2022. Plaintiff was paid on an hourly and commission basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Plaintiff further contends that Defendant failed to advise Plaintiff and aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and other aggrieved employees for the non-productive time associated with their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 110 (2017).

Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, salespersons and commission-based employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

FRANCESCO MASIELLO, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

THE NEIMAN MARCUS GROUP LLC, a
Delaware Limited Liability Company; and
DOES 1 through 50, Inclusive;

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB CODE §§ 226.7 & 512 AND

THE APPLICABLE IWC WAGE ORDER;

6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
9. UNPAID SICK PAY IN VIOLATION OF CAL. LABOR CODE § 246.

DEMAND FOR JURY TRIAL

Plaintiff FRANCESCO MASIELLO (“PLAINTIFF”) an individual, on behalf of himself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant THE NEIMAN MARCUS GROUP LLC (“DEFENDANT” and/or “DEFENDANTS”) is a Delaware limited liability company that at all relevant times owns and operates luxury department stores in the County of Santa Clara, California.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent,

1 servant and/or employee of the DEFENDANTS, and personally participated in the conduct alleged
2 herein on behalf of the DEFENDANTS with respect to the conduct alleged herein. Consequently, the
3 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
4 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
5 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

6 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
7 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
8 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
9 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
10 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

11 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
12 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
13 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
14 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
15 for each underpaid employee.

16 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from February
17 2022 to September 2022, paid in part on an hourly and commission basis, and entitled to the legally
18 required meal and rest periods and payment of minimum wages, reimbursement for business expenses,
19 and overtime wages due for all time worked.

20 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
21 DEFENDANTS' current and former non-exempt and/or sales persons and/or commission-based
22 California employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4)
23 years from the date of the filing of this Complaint and ending on a date determined by the Court (the
24 "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
25 Members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the
26 following class definitions before the Court determines whether class certification is appropriate, or
27 thereafter upon leave of Court:
28

8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of California Labor Code Sections 226.7(c) and the applicable Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to reimburse PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California Labor Code Section 2802, (4) failed to provide accurate itemized wage statements in violation of California Labor Code Sections 226 and 226.3, and (5) failed to pay sick pay at the regular rate of pay in violation of California Labor Code Section 246.

9. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair, and deceptive business practices whereby DEFENDANTS retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

12. Venue is proper in this Court pursuant to California Code of Civil Procedure, sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and DEFENDANTS (i) currently maintain and at all relevant times, maintained offices and facilities in this County and/or

1 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
2 in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 13. In violation of the applicable sections of the California Labor Code and the requirements
5 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
6 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
7 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members
8 of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
9 members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-
10 the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS
11 overtime at the regular rate, failed to compensate PLAINTIFF and other members of the CALIFORNIA
12 CLASS meal and rest premiums at the regular rate, failed to pay PLAINTIFF and other members of
13 the CALIFORNIA CLASS sick pay at the regular rate, and failed to issue to PLAINTIFF and the
14 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
15 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
16 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
17 purposefully avoid the accurate and full payment for all time worked as required by California law
18 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
19 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
20 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

21 **A. Meal Period Violations**

22 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
23 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
24 the time during which an employee is subject to the control of an employer, including all the time the
25 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
26 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying
27 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
28 PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS

1 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
2 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
3 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
4 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA
5 CLASS Members forfeited minimum wage and overtime wages by regularly working without their
6 time being accurately recorded and without compensation at the applicable minimum wage and
7 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
8 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
9 records.

10 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
11 schedules, being required to assist and advise customers, and DEFENDANTS' inadequate staffing
12 practices, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to
13 take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods.
14 PLAINTIFF and other CALIFORNIA CLASS Members were required from time to time to perform
15 work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving
16 a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
17 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these
18 employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The
19 nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not
20 qualify for limited and narrowly construed "on-duty" meal period exception. When they were provided
21 with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
22 required to remain on duty, on call, and required to maintain cordless communication devices on them
23 during meal periods. Further, PLAINTIFF and other CALIFORNIA CLASS Members were required
24 to respond to communications received on said cordless communication devices during what was
25 supposed to be their duty-free meal periods. PLAINTIFF and other CALIFORNIA CLASS Members
26 therefore forfeited meal breaks without additional compensation and in accordance with
27 DEFENDANTS' strict corporate policy and practice.

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1 **B. Rest Period Violations**

2 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
3 CLASS members were also required from time to time to work in excess of four (4) hours without
4 being provided ten (10) minute rest periods as a result of their rigorous work schedule, being required
5 to assist and advise customers, and DEFENDANTS' inadequate staffing. Further, for the same reasons
6 these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
7 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10)
8 minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
9 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
10 more from time to time. When they were provided with rest breaks, PLAINTIFF and other
11 CALIFORNIA CLASS Members were, from time to time, required to remain on duty, on call, and
12 required to maintain cordless communication devices on them during rest periods. Further, PLAINTIFF
13 and other CALIFORNIA CLASS Members were required to respond to communications received on
14 said cordless communication devices during what was supposed to be their duty-free rest periods.
15 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages
16 *in lieu* thereof. As a result of their rigorous work schedules, being required to assist and advise
17 customers, and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
18 Members were from time to time denied their proper rest periods by DEFENDANTS and
19 DEFENDANTS' managers.

20 17. In addition, for those CALIFORNIA CLASS MEMBERS, including PLAINTIFF, who
21 were paid on a commission-based compensation plan, DEFENDANTS failed to compensate
22 PLAINTIFF and CALIFORNIA CLASS MEMBERS for their rest periods as required by the applicable
23 Wage Order and Labor Code. DEFENDANTS did not have a policy or practice which paid for off-
24 duty rest periods to PLAINTIFF and the CALIFORNIA CLASS MEMBERS. As a result,
25 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS MEMBERS with all
26 the legally required paid rest periods is evidenced by DEFENDANT's business records

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1 **D. Unreimbursed Business Expenses**

2 18. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally,
3 knowingly, and systematically failed to reimburse and indemnify PLAINTIFF and other
4 CALIFORNIA CLASS Members or required business expenses they incurred in direct consequence of
5 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
6 employers are required to indemnify employees for all expenses incurred in the course and scope of
7 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
9 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
10 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
11 unlawful."

12 19. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
13 CLASS Members were required by DEFENDANTS to use their own personal vehicles and personal
14 cell phones as a result of and in furtherance of their job duties as employees for DEFENDANTS. But
15 for the use of their own personal vehicles and personal cell phones, PLAINTIFF and the members of
16 the CALIFORNIA CLASS could not complete their essential job duties. Notwithstanding,
17 DEFENDANTS did not reimburse or indemnify PLAINTIFF or other CALIFORNIA CLASS
18 Members for the cost associated with the use of their own personal vehicles and personal cell phones
19 for DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
20 were required by DEFENDANTS to use their personal vehicles and personal cell phones for work
21 related issues, including but not limited to, communications for work-related issues and traveling to
22 perform work-related tasks such as transporting merchandise. As a result, in the course of their
23 employment with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS
24 incurred unreimbursed business expenses which included, but were not limited to, costs related to the
25 use of their personal vehicles and personal cell phones, all on behalf of and for the benefit of
26 DEFENDANTS.

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1 **E. Wage Statement Violations**

2 20. California Labor Code Section 226 requires an employer to furnish its employees an
3 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
4 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
5 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
6 employee and only the last four digits of the employee's social security number or an employee
7 identification number other than a social security number, (8) the name and address of the legal entity
8 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee.

10 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal
12 and rest period premiums, or were paid non-discretionary incentive and/or bonus compensation, or
13 were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other
14 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show,
15 among other things, the total hours worked and all applicable hourly rates in effect during the pay
16 period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
17 payments or missed meal and rest periods.

18 22. In addition to the violations described above, DEFENDANTS, from time to time, failed
19 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
20 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of
21 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
22 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
23 payroll error due to clerical or inadvertent mistake.

24 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

25 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
26 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
27 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
28 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time

1 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary
2 wages for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock.

3 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
4 and other members of the CALIFORNIA CLASS to perform off-the-clock work, including but not
5 limited to, responding to communications from DEFENDANTS' customers. Further, during the CLASS
6 PERIOD, DEFENDANTS engaged in the practice of requiring PLAINTIFF and other CALIFORNIA
7 CLASS members to perform work off the clock after clocking out in that DEFENDANTS, as a condition
8 of employment, required these employees from time to time to wait and submit to loss prevention
9 inspections after clocking out at the end of each scheduled shift, and if they left the store during off duty
10 meal periods, for which DEFENDANTS did not provide compensation for the time spent waiting for
11 and submitting to DEFENDANTS' loss prevention inspections off the clock. This resulted in
12 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

13 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
14 work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

15 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
16 assignments and employment conditions of PLAINTIFF and the other members of the CALIFORNIA
17 CLASS.

18 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members
19 of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or
20 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
21 all the work they performed, including off-the-clock work.

22 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt
23 employees, subject to the requirements of the California Labor Code.

24 30. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members of
25 the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages owed for the off-
26 the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS
27 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
28 DEFENDANTS' policies and practices also deprived them of overtime pay.

1 31. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
2 the CALIFORNIA CLASS off-the-clock work was compensable under the law.

3 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
4 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
5 assisting customers from home. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF
6 and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable
7 law is evidenced by DEFENDANTS' business records.

8 **G. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

9 33. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to fail
10 to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members for their
11 overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the
12 other CALIFORNIA CLASS Members forfeited wages due to them for working overtime without
13 compensation at the correct overtime, meal and rest period premiums, and sick pay rates.
14 DEFENDANTS' uniform policy and practice not to pay the PLAINTIFF and the CALIFORNIA CLASS
15 the correct overtime rate for all overtime worked, meal and rest period premiums, and sick pay in
16 accordance with applicable law is evidenced by DEFENDANTS' business records.

17 34. State law provides that employees must be paid overtime at one-and-one half times their
18 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were compensated at an
19 hourly rate commission.

20 35. The second component of PLAINTIFF's and other CALIFORNIA CLASS Member's
21 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
22 other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANTS.
23 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus, and/or
24 incentive compensation when the employees met the various performance goals set by DEFENDANTS.
25 Further, DEFENDANTS paid shift differentials to PLAINTIFF and CALIFORNIA CLASS Members.

26 36. However, from time-to-time, when calculating the regular rate of pay, in those pay periods
27 where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime, or were paid meal and/or
28 rest period premiums, and earned this non-discretionary bonus, incentive, or shift differential

1 DEFENDANTS failed to accurately include the non-discretionary bonus compensation and/or incentive
2 and/or shift differential paid as part of the employees' "regular rate of pay" and/or calculated all hours
3 worked rather than just all non-overtime hours worked. Further, when calculating the regular rate of pay
4 in order to pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include
5 the incentive compensation and/or shift differential as part of the employees' "regular rate of pay" for
6 purposes of calculating sick pay. Management and supervisors described the incentive/bonus program to
7 potential and new employees as part of the compensation package. As a matter of law, the incentive
8 compensation and shift differentials received by PLAINTIFF and other CALIFORNIA CLASS Members
9 must be included in the "regular rate of pay." The failure to do so has resulted in a systematic
10 underpayment of overtime, meal and rests period premiums, and sick pay to PLAINTIFF and other
11 CALIFORNIA CLASS Members by DEFENDANTS.

12 37. As a matter of law, the incentive, commission, and shift differential compensation received
13 by PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated
14 into the "regular rate of pay" for purposes of overtime compensation, meal and rest period premiums,
15 and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS' systematic underpayment
16 of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
17 CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid
18 sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the
19 workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually
20 works overtime in that workweek. DEFENDANT'S conduct, as articulated herein, by failing to include
21 the incentive compensation and shift differentials as part of the "regular rate of pay" for purposes of sick
22 pay compensation was in violation of Cal. Lab. Code § 246.

23 38. In violation of the applicable sections of the California Labor Code and the requirements
24 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
25 policy, practice, and procedure, intentionally, and knowingly failed to compensate PLAINTIFF and the
26 CALIFORNIA CLASS at the correct rate of pay for all overtime, meal and rest period premiums, and/or
27 sick pay compensation. This uniform policy and practice of DEFENDANTS is intended to purposefully
28 avoid the payment of the correct overtime, meal and rest period premiums, and/or sick pay compensation

as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

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H. CLASS ACTION ALLEGATIONS

39. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-exempt and/or sales persons and/or commission-based California employees ("CALIFORNIA CLASS") during the period beginning four years prior to the filing of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

40. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failed to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failed to reimburse for business expenses, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

41. The members of the class are so numerous that joinder of all class members is impractical.

42. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Member accurate sick pay;
- f. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- g. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- h. Whether DEFENDANTS issued legally compliant wage statements;
- i. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- j. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- k. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and

1 rest periods.

2 43. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
3 of DEFENDANTS' conduct and actions alleged herein.

4 44. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
5 interests as the other members of the class.

6 45. PLAINTIFF will fairly and adequately represent and protect the interests of the
7 CALIFORNIA CLASS Members.

8 46. PLAINTIFF retained able class counsel with extensive experience in class action
9 litigation.

10 47. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
11 of the other CALIFORNIA CLASS Members.

12 48. There is a strong community of interest among PLAINTIFF and the members of the
13 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
14 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

15 49. The questions of law and fact common to the CALIFORNIA CLASS Members
16 predominate over any questions affecting only individual members, including legal and factual issues
17 relating to liability and damages.

18 50. A class action is superior to other available methods for the fair and efficient adjudication
19 of this controversy because joinder of all class members is impractical. Moreover, since the damages
20 suffered by individual members of the class may be relatively small, the expense and burden of
21 individual litigation makes it practically impossible for the members of the class individually to redress
22 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
23 statutory and other legal questions within the class format, prosecution of separate actions by individual
24 members of the CALIFORNIA CLASS will create the risk of:

25 a. Inconsistent or varying adjudications with respect to individual members of the
26 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
27 parties opposing the CALIFORNIA CLASS; and/or,

28 b. Adjudication with respect to individual members of the CALIFORNIA CLASS

1 which would as a practical matter be dispositive of the interests of the other members not
2 party to the adjudication or substantially impair or impeded their ability to protect their
3 interests.

4 51. Class treatment provides manageable judicial treatment calculated to bring an efficient
5 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
6 DEFENDANTS.

7 **FIRST CAUSE OF ACTION**

8 **For Unlawful Business Practices**

9 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

10 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

11 52. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 53. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
14 17021.

15 54. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
16 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
17 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

18 Any person who engages, has engaged, or proposes to engage in unfair
19 competition may be enjoined in any court of competent jurisdiction. The
20 court may make such orders or judgments, including the appointment of a
21 receiver, as may be necessary to prevent the use or employment by any
22 person of any practice which constitutes unfair competition, as defined in
23 this chapter, or as may be necessary to restore to any person in interest any
24 money or property, real or personal, which may have been acquired by
25 means of such unfair competition.

26 Cal. Bus. & Prof. Code § 17203.

27 55. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
28 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
“UCL”), by engaging and continuing to engage in business practices which violates California law,
including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations

1 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
2 1194, 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable
3 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
4 held to constitute unfair competition, including restitution of wages wrongfully withheld.

5 56. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair in that
6 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
7 substantially injurious to employees, and were without valid justification or utility for which this Court
8 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
9 Professions Code, including restitution of wages wrongfully withheld.

10 57. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
11 in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated
12 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
13 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
14 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
15 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
16 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
17 restitution of wages wrongfully withheld.

18 58. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
19 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
20 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

21 59. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
22 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
23 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
24 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
25 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
26 Labor Code.

27 60. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
28 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period

1 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
2 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

3 61. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
4 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not
5 timely provided as required by law.

6 62. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
7 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
8 calculated overtime and missed meal and rest periods premiums.

9 63. By and through the unlawful and unfair business practices described herein,
10 DEFENDANTS has obtained valuable property, money, and services from PLAINTIFF and the other
11 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
12 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
13 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
14 compete against competitors who comply with the law.

15 64. All the acts described herein as violations of, among other things, the Industrial Welfare
16 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
17 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
18 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
19 Bus. & Prof. Code §§ 17200, *et seq.*

20 65. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
21 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
22 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
23 deprived, by means of the above described unlawful and unfair business practices, including earned but
24 unpaid wages for all overtime worked.

25 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
26 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
27 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
28 unfair business practices in the future.

67. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

68. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

69. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

70. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

71. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

72. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

1 73. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were
2 required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked
3 or were not accurately compensated for all overtime hours worked.

4 74. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
6 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
7 CALIFORNIA CLASS Members and denied accurate compensation to PLAINTIFF and the other
8 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
9 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
10 in any workweek.

11 75. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
12 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
13 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
14 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
15 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
16 applicable laws and regulations.

17 76. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
19 all overtime worked.

20 77. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
21 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other
22 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the
23 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude
24 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
25 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
26 negotiable, non-waivable rights provided by the State of California.

27 78. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
28 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned

1 wages.

2 79. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
3 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
4 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
5 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
6 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
7 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

8 80. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
9 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
10 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
11 suffer an economic injury in amounts which are presently unknown to them and which will be
12 ascertained according to proof at trial.

13 81. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
14 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
15 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
16 employees for their labor as a matter of uniform company policy, practice and procedure, and
17 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
18 members of the CALIFORNIA CLASS for overtime worked.

19 82. In performing the acts and practices herein alleged in violation of California labor laws,
20 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
21 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,
22 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
23 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
24 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
25 in order to increase company profits at the expense of these employees.

26 83. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
27 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
28 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the

1 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
2 determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment,
3 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
4 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
5 herein on behalf of these CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein
6 was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
7 Members are entitled to seek and recover statutory costs.

8 **THIRD CAUSE OF ACTION**

9 **For Failure to Pay Minimum Wages**

10 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

11 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

12 84. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
13 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

14 85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
15 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
16 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
17 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members during the CLASS PERIOD.

18 86. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
19 an employer must timely pay its employees for all hours worked.

20 87. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
22 minimum so fixed is unlawful.

23 88. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
24 minimum wage compensation and interest thereon, together with the costs of suit.

25 89. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
26 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
27 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
28 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without

1 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
2 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
3 of the CALIFORNIA CLASS.

4 90. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
6 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
7 of the CALIFORNIA CLASS in regard to minimum wage pay.

8 91. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
9 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
10 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
11 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
12 Industrial Welfare Commission requirements and other applicable laws and regulations.

13 92. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
14 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
15 wage compensation for their time worked for DEFENDANTS.

16 93. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
17 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
18 wages.

19 94. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
20 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
21 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
22 suffer an economic injury in amounts which are presently unknown to them, and which will be
23 ascertained according to proof at trial.

24 95. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
25 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
26 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
27 employees for their labor as a matter of uniform company policy, practice and procedure, and
28 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other

1 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

2 96. In performing the acts and practices herein alleged in violation of California labor laws,
3 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
4 them with the requisite compensation, DEFENDANTS acted and continue to act intentionally,
5 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
6 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the
7 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
8 in order to increase company profits at the expense of these employees.

9 97. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
10 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
11 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
12 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
13 to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANTS'
14 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled
15 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
16 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,
17 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
18 entitled to seek and recover statutory costs.

19 **FOURTH CAUSE OF ACTION**

20 **For Failure to Provide Required Meal Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

23 98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 99. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the
26 legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
27 required by the applicable Wage Order and Labor Code. The nature of the work performed by
28 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved

1 of all their duties for the legally required off-duty meal periods. As a result of their rigorous work
2 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time not fully
3 relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to
4 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior
5 to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time.
6 Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
7 second off-duty meal period in some workdays in which these employees were required by
8 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the
9 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
10 accordance with DEFENDANTS' strict corporate policy and practice.

11 100. DEFENDANTS further violate California Labor Code §§ 226.7 and the applicable IWC
12 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
13 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
14 compensation at each employee's regular rate of compensation for each workday that a meal period was
15 not provided.

16 101. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
17 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
18 and due, interest, penalties, expenses and costs of suit.

19 **FIFTH CAUSE OF ACTION**

20 **For Failure to Provide Required Rest Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

23 102. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 103. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
26 were from time to time required to work in excess of four (4) hours without being provided ten (10)
27 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
28 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at

1 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
2 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
3 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
4 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
5 CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS
6 and DEFENDANTS' managers.

7 104. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC
8 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
9 provided a rest period, in accordance with the applicable Wage Order, one additional hour of
10 compensation at each employee's regular rate of compensation for each workday that rest period was
11 not provided.

12 105. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
13 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
14 and due, interest, penalties, expenses and costs of suit.

15 **SIXTH CAUSE OF ACTION**

16 **For Failure to Reimburse Employees for Required Expenses**

17 **[Cal. Lab. Code § 2802]**

18 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

19 98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
20 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

21 99. Cal. Lab. Code § 2802 provides, in relevant part, that:

22 An employer shall indemnify his or her employee for all necessary
23 expenditures or losses incurred by the employee in direct consequence of
24 the discharge of his or her duties, or of his or her obedience to the directions
of the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

25 100. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code
26 § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA
27 CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
28 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for

1 expenses which included, but were not limited to, costs related to using their personal vehicles and
2 personal cell phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF
3 and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal
4 vehicles and personal cell phones to execute their essential job duties on behalf of DEFENDANTS.
5 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the
6 members of the CALIFORNIA CLASS for expenses resulting from using their personal vehicles and
7 personal cell phones for DEFENDANTS within the course and scope of their employment for
8 DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS
9 are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these
10 expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA
11 CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the
12 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
13 regulations of California.

14 101. PLAINTIFF therefore demands reimbursement on behalf of the members of the
15 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf
16 of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory
17 rate and costs under Cal. Lab. Code § 2802.

18 **SEVENTH CAUSE OF ACTION**

19 **For Failure to Provide Accurate Itemized Statements**

20 **[Cal. Lab. Code §§ 226 and 226.2]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

22 102. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

24 103. Cal. Labor Code § 226 provides that an employer must furnish employees with an
25 "accurate itemized" statement in writing showing:

- 26 1. Gross wages earned;
- 27 2. Total hours worked by the employee, except for any employee
28 whose compensation is solely based on a salary and who is exempt from

1 payment of overtime under subdivision (a) of Section 515 or any applicable
2 order of the Industrial Welfare Commission;

3 3. The number of piece-rate units earned and any applicable piece rate
4 if the employee is paid on a piece-rate basis;

5 4. All deductions, provided that all deductions made on written orders
6 of the employee may be aggregated and shown as one item;

7 5. Net wages earned;

8 6. The inclusive dates of the period for which the employee is paid,

9 7. The name of the employee and his or her social security number,
10 except that by January 1, 2008, only the last four digits of his or her social
11 security number or an employee identification number other than a social
12 security number may be shown on the itemized statement,

13 8. The name and address of the legal entity that is the employer, and

14 9. All applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 104. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the
17 other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
18 to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3)
19 gross wages earned; (4) the correct name and address of the legal entity that is the employer; and (5)
20 the last four (4) digits of employee's social security number or an employee identification number all
21 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
22 at each hourly rate by the employee in violation of California Labor Code Section 226(a).

23 105. Further, DEFENDANTS violated California Labor Code Section 226(a)(6) by failing to
24 provide the inclusive dates of the period for which PLAINTIFF and CALIFORNIA CLASS Members
25 were paid; and DEFENDANTS violated California Labor Code Section 226(a)(8) by failing to provide
26 the name and address of the legal entity that is the employer. In addition to the foregoing,
27 DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the
28 CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

106. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal Lab. Code §§201, 202, 203)

((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))

107. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

108. Cal. Lab. Code § 200 provides that:

As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

109. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

110. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in

1 which case the employee is entitled to his or her wages at the time
2 of quitting. Notwithstanding any other provision of law, an
3 employee who quits without providing a 72-hour notice shall be
4 entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute
the date of payment for purposes of the requirement to provide
payment within 72 hours of the notice of quitting.

5 111. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
6 employment contract.

7 112. Cal. Lab. Code § 203 provides:

8 If an employer willfully fails to pay, without abatement or reduction,
9 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
10 of an employee who is discharged or who quits, the wages of the
11 employee shall continue as a penalty from the due date thereof at the
same rate until paid or until an action therefor is commenced; but
the wages shall not continue for more than 30 days.

12 113. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated,
13 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
14 breaks, as required by law.

15 114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members
16 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty (30) days of
17 pay as penalty for not paying all wages due at time of termination for all employees who terminated
18 employment during the CLASS PERIOD and demands an accounting and payment of all wages due,
19 plus interest and statutory costs as allowed by law.

20 **NINTH CAUSE OF ACTION**

21 **UNPAID SICK PAY**

22 **(Cal. Lab. Code § 246, *et seq.*)**

23 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANTS)**

24 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

26 116. Cal. Labor Code Sections 246(l)(1) mandates that "[p]aid sick time for nonexempt
27 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
28

1 the employee uses paid sick time, whether or not the employee actually works overtime in that
2 workweek.”

3 117. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA
4 CLASS were compensated at an hourly rate plus bonuses. As a matter of law, the bonus compensation
5 received by PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the
6 “regular rate of pay.”

7 118. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF
8 and other members of the CALIFORNIA CLASS earned hourly compensation and non-discretionary
9 incentive compensation, and took paid sick time, DEFENDANT failed to properly calculate the regular
10 rate of pay for purposes of compensating paid sick time by omitting non-discretionary incentive pay
11 from the regular rate of pay.

12 119. DEFENDANT’s uniform policy and practice of omitting non-discretionary bonuses from
13 the regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay
14 wages to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other
15 members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick
16 pay wages, according to proof, interest, statutory costs, as well as the assessment of any statutory
17 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
18 applicable statutes. To the extent sick pay is determined to be owed to other members of the
19 CALIFORNIA CLASS who have terminated their employment, DEFENDANT’s conduct also violates
20 Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
21 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of
22 the CALIFORNIA CLASS. DEFENDANT’S conduct as alleged herein was willful, intentional and
23 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are entitled
24 to seek and recover statutory costs.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- 27 1. On behalf of the CALIFORNIA CLASS:
- 28

1 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
2 a class action pursuant to Cal. Code of Civ. Proc. § 382;

3 B) An order temporarily, preliminarily and permanently enjoining and restraining
4 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

5 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
6 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

7 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
8 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
9 members of the CALIFORNIA CLASS.

10 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth
11 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
12 Proc. § 382;

13 1. Compensatory damages, according to proof at trial, including compensatory
14 damages for minimum wage compensation, overtime compensation, sick pay,
15 unreimbursed business expenses due PLAINTIFF and the other members of the
16 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
17 interest thereon at the statutory rate;

18 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
19 which a violation occurs and one hundred dollars (\$100) per each member of the
20 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
21 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of
22 Cal. Lab. Code § 226;

23 3. Meal and rest period compensation pursuant to California Labor Code Section
24 226.7, 512 and the applicable IWC Wage Order;

25 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
26 1197; and
27
28

EXHIBIT 3

EXHIBIT 4

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
Maboudi v. Nieman Marcus (002-255)							
08/31/2021	No	Jean Claude Lapuyade	Fact Investigation - Client Intake	550.00	1:00	550.00	550.00
09/01/2021	No	Jean Claude Lapuyade	Fact Investigation - R&R Employee Documents	550.00	2:18	1,265.00	1,815.00
09/03/2021	No	Jean Claude Lapuyade	Legal Research - RROP Issues and Commissioned Sales Non Productive Time Cases	550.00	6:54	3,795.00	5,610.00
09/07/2021	No	Jean Claude Lapuyade	Case Management - Drafted Liability Memo and Outline	550.00	3:30	1,925.00	7,535.00
09/08/2021	No	Jean Claude Lapuyade	Discovery - Drafted, Revised and Edited Employee File Demand	550.00	1:30	825.00	8,360.00
09/08/2021	No	Jean Claude Lapuyade	Legal Research - Employee File Demand Statutes	550.00	1:36	880.00	9,240.00
09/09/2021	No	Tesla Stone	Create Case File. Client intake. Welcome Packet. Fee Agreement. Calendaring.	175.00	2:18	402.50	9,642.50
09/09/2021	No	Tesla Stone	Draft and serve file demand. Entity research.	175.00	1:06	192.50	9,835.00
09/23/2021	No	Jean Claude Lapuyade	Legal Research - LWDA Notice Requirements (Cases and Statutes)	550.00	5:18	2,915.00	12,750.00
09/28/2021	No	Jean Claude Lapuyade	Pleadings - Drafted, Revised and Edited LWDA notice	550.00	3:54	2,145.00	14,895.00
09/30/2021	No	Jean Claude Lapuyade	Pleadings - Emails to/from Co Counsel Re LWDA Notice	550.00	0:42	385.00	15,280.00
10/01/2021	No	Jean Claude Lapuyade	Pleadings - TCW Client Re LWDA Notice	550.00	0:30	275.00	15,555.00

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
10/04/2021	No	Tesla Stone	Review and organize client documents.	175.00	1:00	175.00	15,730.00
10/05/2021	No	Tesla Stone	Case Meeting/File Maintenance/Calendar	175.00	0:54	157.50	15,887.50
10/06/2021	No	Jean Claude Lapuyade	Pleadings - Revised, Edited and Finalized LWDA notice	550.00	1:18	715.00	16,602.50
10/08/2021	No	Tesla Stone	Review, Submit and Serve PAGA Letter. Entity Research. Calendar.	175.00	1:18	227.50	16,830.00
10/11/2021	No	Jean Claude Lapuyade	Legal Research - Meal (On Duty) Agreements	550.00	3:30	1,925.00	18,755.00
10/11/2021	No	Jean Claude Lapuyade	Case Management - Drafted Status Letter/Email to Client Re Timeline for LWDA Notice and Filing	550.00	1:00	550.00	19,305.00
10/22/2021	No	Tesla Stone	Receive, Review and Organize Employee File	175.00	2:06	367.50	19,672.50
10/25/2021	No	Jean Claude Lapuyade	Fact Investigation - R&R Employee File Production	550.00	6:30	3,575.00	23,247.50
11/02/2021	No	Tesla Stone	Case Meeting/File Maintenance	175.00	0:54	157.50	23,405.00
11/03/2021	No	Jean Claude Lapuyade	Legal Research - Ferra Claims, Bag Check OTC Claims	550.00	5:18	2,915.00	26,320.00
11/18/2021	No	Jean Claude Lapuyade	Legal Research - Drafted Internal Liability Memo Re Ferra and OTC	550.00	2:00	1,100.00	27,420.00
11/23/2021	No	Jean Claude Lapuyade	Case management - Drafted Status Update to Client Re Claims Analysis and Timeline for Filing	550.00	0:48	440.00	27,860.00
12/01/2021	No	Tesla Stone	Case Meeting/File Maintenance/Calendar Check	175.00	0:48	140.00	28,000.00
12/09/2021	No	Jean Claude Lapuyade	Pleadings - Drafted, Revised and Edited Complaint	550.00	3:54	2,145.00	30,145.00
12/10/2021	No	Jean Claude Lapuyade	Pleadings - Emails to/from Co Counsel Re Complaint	550.00	0:48	440.00	30,585.00

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
12/13/2021	No	Jean Claude Lapuyade	Pleadings - Reviewed, Revised and Edited Complaint	550.00	1:48	990.00	31,575.00
12/14/2021	No	Jean Claude Lapuyade	Case Management - Emails to/from Client Re Complaint Approval	550.00	0:42	385.00	31,960.00
12/15/2021	No	Jean Claude Lapuyade	Pleadings - Finalized Complaint for Filing	550.00	0:30	275.00	32,235.00
12/15/2021	No	Tesla Stone	Review Complaint. Review LR's. Draft and finalize Initiating Pleadings. File Complaint.	175.00	3:12	560.00	32,795.00
12/21/2021	No	Tesla Stone	File Maintenance/Serve Complaint/Entity Research/Corres. w/ Process Server	175.00	1:12	210.00	33,005.00
12/21/2021	No	Jean Claude Lapuyade	Case Management - Emails to Client Re Timeline for Service and Status of Filing	550.00	0:30	275.00	33,280.00
12/28/2021	No	Tesla Stone	File maintenance - save pleading. review file. update service list.	175.00	0:36	105.00	33,385.00
01/20/2022	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Appearance	550.00	1:06	605.00	33,990.00
01/25/2022	No	Jean Claude Lapuyade	Case Management - TCW OC Re Status of Pleadings/Service and Case Progression	550.00	0:30	275.00	34,265.00
02/02/2022	No	Jean Claude Lapuyade	Case Management - R&R OC Notice of Appearance	550.00	0:30	275.00	34,540.00
02/11/2022	No	Jean Claude Lapuyade	Case Management - TCW Client Re Status	550.00	0:24	220.00	34,760.00
04/04/2022	No	Tesla Stone	Review LR and Orders. Stip to Cont. Corres w. OC. Case Meeting. File and Serve.	175.00	1:18	227.50	34,987.50
04/06/2022	No	Jean Claude Lapuyade	Case Management - R&R File in Prep for M&C Call with OC	550.00	1:00	550.00	35,537.50
04/08/2022	No	Jean Claude	Case Management - TCW OC Re M&C on CMS	550.00	0:24	220.00	35,757.50

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
04/11/2022	No	Lapuyade Jean Claude Lapuyade	Case Management - Drafted, Revised and Finalized CMS	550.00	0:54	495.00	36,252.50
04/11/2022	No	Lapuyade Jean Claude Lapuyade	Case Management - Drafted Joint CMS	550.00	0:48	440.00	36,692.50
04/12/2022	No	Tesla Stone	Review LR and Orders. Draft Joint Report. Corres w. OC. Case Meeting. File and Serve.	175.00	2:18	402.50	37,095.00
05/04/2022	No	Tesla Stone	File maintenance - save pleadings & calendar.	175.00	0:36	105.00	37,200.00
05/05/2022	No	Tesla Stone	draft and serve discovery	175.00	1:12	210.00	37,410.00
05/20/2022	No	Jean Claude Lapuyade	Discovery - Drafted, Revised and Edited SI (Set 2), RFP (Set 1, FR-E (Set 1) and FR-G (Set 1)	550.00	5:42	3,135.00	40,545.00
05/24/2022	No	Jean Claude Lapuyade	Discovery - Emails to/from Co Counsel Re Edits to Discovery	550.00	0:24	220.00	40,765.00
05/25/2022	No	Jean Claude Lapuyade	Discovery - Finalized SI (Set 2), RFA (Set 1), RFP (Set 1)	550.00	2:00	1,100.00	41,865.00
06/07/2022	No	Tesla Stone	File Maintenance/Calendaring/Discovery review	175.00	1:36	280.00	42,145.00
06/13/2022	No	Tesla Stone	File maintenance - save pleading. review file. update service list. Draft discovery.	175.00	0:48	140.00	42,285.00
06/16/2022	No	Jean Claude Lapuyade	Pleadings - R&R Answer	550.00	1:30	825.00	43,110.00
06/16/2022	No	Jean Claude Lapuyade	Legal Research - Motion to Strike and Demurrer Answer on Waiver of Breaks and Viking River Cruise	550.00	3:00	1,650.00	44,760.00
07/22/2022	No	Jean Claude Lapuyade	Discovery - Emails to/form OC Re Discovery Extension	550.00	0:24	220.00	44,980.00
07/27/2022	No	Jean Claude Lapuyade	Case Management - Emails Re Mediation	550.00	0:18	165.00	45,145.00

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
08/02/2022	No	Jean Claude Lapuyade	Discovery - M&C Call with OC Re Belaire	550.00	0:18	165.00	45,310.00
08/05/2022	No	Jean Claude Lapuyade	Case Management - Drafted, Revised and Edited Joint Statement	550.00	0:42	385.00	45,695.00
08/10/2022	No	Jean Claude Lapuyade	Case Management - Drafted and Revised Joint CMS	550.00	1:06	605.00	46,300.00
08/13/2022	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Substitution	550.00	0:30	275.00	46,575.00
08/14/2022	No	Jean Claude Lapuyade	Case Management - Emails to/from New Counsel Re Status	550.00	0:30	275.00	46,850.00
08/15/2022	No	Tesla Stone	File maintenance - save pleading. review file. update service list.	175.00	0:36	105.00	46,955.00
08/19/2022	No	Tesla Stone	Review LR and Orders. Draft Joint Report. Corres w. OC. Case Meeting. File and Serve.	175.00	2:06	367.50	47,322.50
08/28/2022	No	Tesla Stone	File Maintenance/Calendaring	175.00	0:48	140.00	47,462.50
10/10/2022	No	Jean Claude Lapuyade	Case Management - Email to/from OC Re Mediation	550.00	0:24	220.00	47,682.50
10/12/2022	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Extension	550.00	0:12	110.00	47,792.50
10/18/2022	No	Monnett DeLaTorre	Review Complaint, Court's Complex Order, Defendant's Answer, and PAGA letter in furtherance of getting up to speed with case facts, preparing analysis of relevant information and conducting team litigation strategy meeting.	500.00	3:12	1,600.00	49,392.50
10/19/2022	No	Monnett DeLaTorre	Review client's documents and employee file obtained from defense in order to perform initial analysis of relevant information and potential claims.	500.00	1:30	750.00	50,142.50
10/25/2022	No	Monnett DeLaTorre	Evaluation and review of Client's time and payroll records in conjunction with preparing analysis of relevant information, potential claims and additional information needed to support claims.	500.00	2:30	1,250.00	51,392.50
10/28/2022	No	Jean	Mediation - Emails to/from OC and Mediator Re Mediation	550.00	0:24	220.00	51,612.50

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
11/01/2022	No	Claude Lapuyade Monnett DeLaTorre	Litigation team discussion regarding mediation.	500.00	0:06	50.00	51,662.50
11/15/2022	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Mediator Selections	550.00	0:42	385.00	52,047.50
11/29/2022	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:54	157.50	52,205.00
11/30/2022	No	Jean Claude Lapuyade	Case Management - Email to/from OC Re Case Status	550.00	0:12	110.00	52,315.00
12/01/2022	No	Monnett DeLaTorre	follow up litigation team discussions regarding mediation and impact for CMC.	500.00	0:12	100.00	52,415.00
12/06/2022	No	Monnett DeLaTorre	Review and revise joint case management statement in preparation for hearing.	500.00	0:12	100.00	52,515.00
12/06/2022	No	Monnett DeLaTorre	Review email from defense Counsel regarding mediation and internal discussion with litigation team regarding discussion needed with OC.	500.00	0:18	150.00	52,665.00
12/07/2022	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Discovery Extension	550.00	0:30	275.00	52,940.00
12/13/2022	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Mediators and Dates	550.00	0:24	220.00	53,160.00
12/15/2022	No	Tesla Stone	File Maintenance/Submit Complaint to LWDA	175.00	0:42	122.50	53,282.50
12/15/2022	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:54	157.50	53,440.00
12/16/2022	No	Tesla Stone	File Maintenance/Calendar	175.00	0:30	87.50	53,527.50
12/16/2022	No	Tesla Stone	Review LR and Orders. Draft Joint Report. Corres w. OC. Case Meeting. File and Serve.	175.00	2:18	402.50	53,930.00
12/18/2022	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re CMS	550.00	0:30	275.00	54,205.00
12/23/2022	No	Jean Claude	Legal Research - Manageability Post Adecco	550.00	5:42	3,135.00	57,340.00

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
		Lapuyade					
12/27/2022	No	Monnett	Conduct evaluation associated statute of limitations, claims asserted by Client and facts provided for purposes of consideration at mediation.	500.00	1:00	500.00	57,840.00
12/29/2022	No	DeLaTorre					
		Jean	Discovery - Drafted, Revised and Edited Stip to Stay	550.00	1:30	825.00	58,665.00
		Claude					
		Lapuyade					
01/03/2023	No	Jean	Cases Management - Emails to/from OC Re Mediation	550.00	0:30	275.00	58,940.00
		Claude					
		Lapuyade					
01/05/2023	No	Monnett	Review correspondence from mediator confirming mediation.	500.00	0:18	150.00	59,090.00
		DeLaTorre					
01/05/2023	No	Jean	Case Management - TCW Client Re Case Status	550.00	0:48	440.00	59,530.00
		Claude					
		Lapuyade					
01/06/2023	No	Monnett	Emails with defense counsel regarding pre-mediation data demand and information request for mediation.	500.00	0:12	100.00	59,630.00
		DeLaTorre					
01/06/2023	No	Monnett	Review emails with OC regarding mediation, begin preparing mediation data demand including scope of sampling to be requested in preparation for mediation and discuss terms with litigation team.	500.00	1:30	750.00	60,380.00
		DeLaTorre					
01/08/2023	No	Jean	Case Management - Emails to/from OC Re Mediation	550.00	0:30	275.00	60,655.00
		Claude					
		Lapuyade					
01/12/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:48	140.00	60,795.00
02/14/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:54	157.50	60,952.50
02/15/2023	No	Jean	Discovery - R&R Mediation Data Production	550.00	6:54	3,795.00	64,747.50
		Claude					
		Lapuyade					
02/17/2023	No	Jean	Case Management - Drafted, Revised and Edited Status Letter to Client	550.00	2:24	1,320.00	66,067.50
		Claude					
		Lapuyade					
02/23/2023	No	Jean	Discovery - Revised and Edited Stip to Stay	550.00	0:42	385.00	66,452.50
		Claude					
		Lapuyade					

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
02/23/2023	No	Jean Claude Lapuyade	Discovery - TCW OC Re Mediation Data	550.00	0:30	275.00	66,727.50
02/23/2023	No	Jean Claude Lapuyade	Case Management - Drafted, Revised and Edited Letter to Client Re Liability and Damages	550.00	4:24	2,420.00	69,147.50
02/24/2023	No	Jean Claude Lapuyade	Case Management - TCW Client Re Claim Analysis	550.00	0:42	385.00	69,532.50
02/28/2023	No	Monnett DeLaTorre	Begin review of data provided by opposing counsel to perform spot check analysis of evidence to be used to support claims.	500.00	1:30	750.00	70,282.50
02/28/2023	No	Jean Claude Lapuyade	Fact Investigation - R&R Handbooks and Policy Produced for Mediation	550.00	3:54	2,145.00	72,427.50
03/10/2023	No	Tesla Stone	Review LR and Orders. Draft Stip. to Stay. File and Serve.	175.00	1:48	315.00	72,742.50
03/23/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:48	140.00	72,882.50
04/03/2023	No	Tesla Stone	Sent client Masiello the client initiation packet, contacted him via text, email, and phone call to let him know to sign	175.00	0:48	140.00	73,022.50
04/03/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	550.00	0:24	220.00	73,242.50
04/03/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data .5	550.00	0:30	275.00	73,517.50
04/04/2023	No	Tesla Stone	Email Corres.	175.00	0:36	105.00	73,622.50
04/05/2023	No	Monnett DeLaTorre	Review file of secondary client, review complaint and PAGA letter and prepare analysis of relevant information to be used to assist with mediation.	500.00	2:00	1,000.00	74,622.50
04/06/2023	No	Monnett DeLaTorre	Team discussion regarding second client and need to discuss with defense counsel.	500.00	0:12	100.00	74,722.50
04/06/2023	No	Jean Claude Lapuyade	Discovery/Mediation - TCW OC RE Data Production and Mediation	550.00	0:42	385.00	75,107.50
04/06/2023	No	Tesla Stone	Draft and serve file demand. Entity research.	175.00	0:54	157.50	75,265.00

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
04/12/2023	No	Tesla Stone	New client Intake. Sort Docs. Client Corres. Welcome Packet.	175.00	3:12	560.00	75,825.00
04/14/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	1:06	192.50	76,017.50
04/28/2023	No	Tesla Stone	File Maintenance/Calendar	175.00	0:24	70.00	76,087.50
04/28/2023	No	Jean Claude Lapuyade	Discovery - R&R Employee File for Class Member FM	550.00	2:24	1,320.00	77,407.50
05/02/2023	No	Monnett DeLaTorre	Case Management - Emails to/from OC Re Mediation	500.00	0:36	300.00	77,707.50
05/02/2023	No	Monnett DeLaTorre	Review correspondence from mediator regarding continued mediation.	500.00	0:12	100.00	77,807.50
05/09/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	550.00	0:24	220.00	78,027.50
05/09/2023	No	Jean Claude Lapuyade	Discovery - Drafted, Revised and Edited Stip to Stay	550.00	0:36	330.00	78,357.50
05/10/2023	No	Monnett DeLaTorre	Review and revise amended stip to stay associated with mediation.	500.00	0:24	200.00	78,557.50
05/10/2023	No	Monnett DeLaTorre	Email to defense counsel regarding status of pre-mediation document production.	500.00	0:06	50.00	78,607.50
05/10/2023	No	Monnett DeLaTorre	Email to opposing counsel regarding data production in advance of mediation.	500.00	0:06	50.00	78,657.50
05/10/2023	No	Monnett DeLaTorre	Review and finalize PAGA Notice and Complaint for new representative.	500.00	0:48	400.00	79,057.50
05/11/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	550.00	0:24	220.00	79,277.50
05/12/2023	No	Tesla Stone	Receive, download, and organize Masiello's employee file	175.00	2:00	350.00	79,627.50
05/14/2023	No	Tesla Stone	Organize client documents received from Masiello	175.00	1:00	175.00	79,802.50
05/16/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:54	157.50	79,960.00
05/19/2023	No	Jean Claude	Discovery - Drafted, Revised and Edited Amended Stip to Stay	550.00	1:12	660.00	80,620.00

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
05/21/2023	No	Lapuyade Jean Claude Lapuyade	Discovery - TCW OC Re Mediation Data	550.00	0:30	275.00	80,895.00
05/24/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Amended LWDA Notices	550.00	0:30	275.00	81,170.00
05/24/2023	No	Tesla Stone	Draft submit and serve PAGA Letter. entity research.	175.00	2:18	402.50	81,572.50
06/15/2023	No	Tesla Stone	Email Corres.	175.00	0:03	8.75	81,581.25
06/16/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:48	140.00	81,721.25
06/21/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Data Demand	550.00	0:18	165.00	81,886.25
06/23/2023	No	Jean Claude Lapuyade	Discovery - TCW Expert Re Data Analysis	550.00	0:54	495.00	82,381.25
06/28/2023	No	Tesla Stone	Case Meeting/File Maintenance/Calendar	175.00	0:54	157.50	82,538.75
06/29/2023	No	Tesla Stone	File maintenance	175.00	1:00	175.00	82,713.75
07/03/2023	No	Jean Claude Lapuyade	Case Management - TCW Client Re Status	550.00	0:48	440.00	83,153.75
07/05/2023	No	Tesla Stone	Review LR and Orders. Draft Joint Report. Corres w. OC. Case Meeting. File and Serve.	175.00	2:00	350.00	83,503.75
07/06/2023	No	Jean Claude Lapuyade	Discovery - TCW OC Re Mediation Data	550.00	0:30	275.00	83,778.75
07/11/2023	No	Tesla Stone	email corres.	175.00	0:03	8.75	83,787.50
07/13/2023	No	Jean Claude Lapuyade	Discovery - Email to/from OC Re Damage Analysis	550.00	0:36	330.00	84,117.50
07/13/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	1:06	192.50	84,310.00
07/14/2023	No	Jean Claude	Discovery - Emails to/from Expert Re Data Analysis	550.00	0:54	495.00	84,805.00

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
07/14/2023	No	Lapuyade Jean Claude Lapuyade	Case Management - TCW Client Re Status	550.00	1:12	660.00	85,465.00
07/14/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:48	140.00	85,605.00
07/17/2023	No	Monnett DeLaTorre	Review detailed email from defense counsel regarding detailed list of information being requested for mediation.	500.00	0:24	200.00	85,805.00
07/17/2023	No	Jean Claude Lapuyade	Legal Research - Mediation Brief Issues (RROP .5 vs. 1.5)	550.00	6:42	3,685.00	89,490.00
07/19/2023	No	Jean Claude Lapuyade	Law and Motion - Drafted, Revised and Edited Mediation Brief	550.00	5:30	3,025.00	92,515.00
07/21/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	550.00	0:36	330.00	92,845.00
07/24/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from Expert Re Data Analysis	550.00	0:18	165.00	93,010.00
07/24/2023	No	Jean Claude Lapuyade	Case Management - Drafted, Edited and Revised Stip to Continue CMC	550.00	0:36	330.00	93,340.00
07/24/2023	No	Jean Claude Lapuyade	DISCOVERY - Emails to/from OC Re Mediation Data from PLA	550.00	0:30	275.00	93,615.00
07/26/2023	No	Monnett DeLaTorre	Review 46 page production of documents to be sent to defense counsel in preparation for mediation.	500.00	1:00	500.00	94,115.00
07/26/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from Expert Re Mediation Data	550.00	0:54	495.00	94,610.00
07/26/2023	No	Jean Claude Lapuyade	Discovery - R&R Expert Analysis	550.00	3:36	1,980.00	96,590.00

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Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
07/26/2023	No	Monnett DeLaTorre	Review time and payroll records for both clients, spot check for violations, review mediation brief and provide comments and prepare analysis of relevant information in preparation for mediation.	500.00	2:30	1,250.00	97,840.00
07/26/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC RE Continuance of CMC	550.00	0:24	220.00	98,060.00
07/27/2023	No	Tesla Stone	File maintenance	175.00	1:00	175.00	98,235.00
07/27/2023	No	Jean Claude Lapuyade	Law and Motion - R&R Defendant's Mediation Brief	550.00	4:30	2,475.00	100,710.00
07/27/2023	No	Jean Claude Lapuyade	Mediation - Emails to/from OC Re Pre Mediation Settlement Demand	550.00	1:30	825.00	101,535.00
07/27/2023	No	Monnett DeLaTorre	Review Defense mediation brief and prepare notes of relevant information and issues to be disputed at mediation.	500.00	1:36	800.00	102,335.00
07/28/2023	No	Jean Claude Lapuyade	Case Management - Drafted, Revised and Edited Joint CMS	550.00	0:42	385.00	102,720.00
07/28/2023	No	Monnett DeLaTorre	Review mediation brief as well as pre-mediation production in preparation for mediation.	500.00	3:00	1,500.00	104,220.00
07/31/2023	No	Jean Claude Lapuyade	Discovery - R&R Updated Data and Emails to/from Expert RE Same	550.00	1:42	935.00	105,155.00
07/31/2023	No	Jean Claude Lapuyade	Mediation - Emails to/from Jeff Ross Re Questions on Brief	550.00	1:30	825.00	105,980.00
08/01/2023	No	Jean Claude Lapuyade	Attended Mediation	550.00	10:00	5,500.00	111,480.00
08/01/2023	No	Monnett DeLaTorre	Attended Mediation	500.00	10:00	5,000.00	116,480.00
08/01/2023	No	Sydney Castillo-	Mediation - Attended mediation	400.00	10:00	4,000.00	120,480.00

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
08/02/2023	No	Johnson Jean Claude Lapuyade	Case Management - Drafted Status Letter Re Mediation and Proposal to Client	550.00	2:06	1,155.00	121,635.00
08/02/2023	No	Monnett DeLaTorre	Team discussion regarding settlement negotiations at mediation and need to discuss settlement with the client.	500.00	0:30	250.00	121,885.00
08/03/2023	No	Monnett DeLaTorre	Review email from mediator confirming both sides accepted the mediator's proposal.	500.00	0:06	50.00	121,935.00
08/05/2023	No	Jean Claude Lapuyade	Settlement - Revised and Edited the MOU	550.00	2:00	1,100.00	123,035.00
08/09/2023	No	Tesla Stone	File maintenance	175.00	1:00	175.00	123,210.00
08/09/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	550.00	0:30	275.00	123,485.00
08/10/2023	No	Monnett DeLaTorre	Review original draft of MOU for puposes of preparing for reviewing defense edits and conduct strategy discussion with litigation team.	500.00	1:12	600.00	124,085.00
08/11/2023	No	Jean Claude Lapuyade	Settlement - R&R MOU with Defense Edits	550.00	2:06	1,155.00	125,240.00
08/11/2023	No	Monnett DeLaTorre	Review further redline changes to MOU by defense counsel and comment with litigation team.	500.00	0:30	250.00	125,490.00
08/11/2023	No	Monnett DeLaTorre	Review MOU, review emails exchanged with OC regarding MOU, review proposed edits and comments on terms.	500.00	1:30	750.00	126,240.00
08/14/2023	No	Jean Claude Lapuyade	Case Management - Drafted Letter w/ Analysis to Client Re Proposal	550.00	2:48	1,540.00	127,780.00
08/17/2023	No	Jean Claude Lapuyade	Settlement - Drafted Settlement Evaluation Letter to Client PM	550.00	3:06	1,705.00	129,485.00
08/18/2023	No	Jean Claude Lapuyade	Settlement TCW Client RE MOU	550.00	0:36	330.00	129,815.00

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
08/18/2023	No	Tesla Stone	Client Corres./Draft A/C Waiver	175.00	1:12	210.00	130,025.00
08/25/2023	No	Tesla Stone	Review LR and Orders. Draft Joint Report. Corres w. OC. Case Meeting. File and Serve.	175.00	2:12	385.00	130,410.00
08/25/2023	No	Jean Claude Lapuyade	Case Management - Drafted, Revised and Edited Joint CMS	550.00	1:00	550.00	130,960.00
08/28/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	550.00	0:24	220.00	131,180.00
09/01/2023	No	Monnett DeLaTorre	Review, edit and settlement agreement and provide guidance as to terms to be included.	500.00	1:00	500.00	131,680.00
09/06/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from Client Re MOU	550.00	0:42	385.00	132,065.00
09/14/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:54	157.50	132,222.50
09/17/2023	No	Jean Claude Lapuyade	Settlement - Drafted, Revised and Edited SAR	550.00	3:42	2,035.00	134,257.50
09/18/2023	No	Monnett DeLaTorre	Review PAGA settlement agreement in order to provide comments and edits before sent to defense counsel.	500.00	1:30	750.00	135,007.50
09/20/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from Client Re SAR	550.00	1:00	550.00	135,557.50
09/29/2023	No	Tesla Stone	Circulate the MOU for sigantures	175.00	1:00	175.00	135,732.50
10/03/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from Client Re Status	550.00	0:42	385.00	136,117.50
10/04/2023	No	Jean Claude Lapuyade	Settlement - Revised and Edited SAR	550.00	2:48	1,540.00	137,657.50
10/05/2023	No	Jean Claude Lapuyade	Settlement - Revised and Edited SAR from Defense	550.00	3:30	1,925.00	139,582.50
10/05/2023	No	Monnett	Review and comment on Draft FAC to add second Plaintiff and Stip to Amend to be included	500.00	0:36	300.00	139,882.50

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
		DeLaTorre	with FAC.				
10/10/2023	No	Tesla Stone	Proofread Approval Motion/File Maintenance	175.00	1:30	262.50	140,145.00
10/13/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	550.00	0:24	220.00	140,365.00
10/16/2023	No	Jean Claude Lapuyade	Settlement - emails to/from OC Re SAR and Reviewed and Revised SAR w/ Defense Edits	550.00	1:18	715.00	141,080.00
10/19/2023	No	Tesla Stone	File maintenance	175.00	1:00	175.00	141,255.00
10/23/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from Client Re MOU	550.00	0:18	165.00	141,420.00
10/30/2023	No	Jean Claude Lapuyade	Settlement - Revised Class Notice	550.00	0:42	385.00	141,805.00
10/30/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	550.00	0:36	330.00	142,135.00
10/30/2023	No	Jean Claude Lapuyade	Settlement - R&R SAR and Class Notice with further edits	550.00	1:18	715.00	142,850.00
11/09/2023	No	Tesla Stone	Email Corres.	175.00	0:03	8.75	142,858.75
11/16/2023	No	Tesla Stone	File maintenance	175.00	1:00	175.00	143,033.75
11/20/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	550.00	0:24	220.00	143,253.75
11/23/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	1:06	192.50	143,446.25
11/26/2023	No	Jean Claude Lapuyade	Settlement - R&R Defense Edits to Stip for Leave, SAR and FAC	550.00	1:30	825.00	144,271.25
11/27/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	550.00	0:42	385.00	144,656.25

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
11/28/2023	No	Tesla Stone	File maintenance	175.00	1:00	175.00	144,831.25
11/29/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	550.00	0:18	165.00	144,996.25
12/04/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	550.00	1:24	770.00	145,766.25
12/05/2023	No	Tesla Stone	Review LR and Orders. Draft Joint Report. Corres w. OC. Case Meeting. File and Serve.	175.00	1:48	315.00	146,081.25
12/07/2023	No	Monnett DeLaTorre	Review and finalize CMS to be filed prior to CMC.	500.00	0:18	150.00	146,231.25
12/07/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC RE Joint CMS	550.00	0:18	165.00	146,396.25
12/11/2023	No	Tesla Stone	Send status update emails	175.00	0:18	52.50	146,448.75
12/11/2023	No	Tesla Stone	File Maintenance/Calendaring	175.00	0:30	87.50	146,536.25
12/12/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	550.00	0:48	440.00	146,976.25
12/13/2023	No	Tesla Stone	File Maintenance/Calendaring	175.00	0:24	70.00	147,046.25
12/15/2023	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:48	140.00	147,186.25
12/20/2023	No	Tesla Stone	Circulate both individual SARs and the PAGA SAR for signature	175.00	1:00	175.00	147,361.25
12/20/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	550.00	0:18	165.00	147,526.25
12/27/2023	No	Tesla Stone	Email Corres.	175.00	0:36	105.00	147,631.25
12/27/2023	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	550.00	0:24	220.00	147,851.25
01/02/2024	No	Tesla Stone	File Maintenance/Calendaring/File & Serve FAC	175.00	1:18	227.50	148,078.75
01/03/2024	No	Jean Claude Lapuyade	Legal Research - PAGA Settlement Approval Standards	550.00	4:00	2,200.00	150,278.75

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
01/04/2024	No	Jean Claude Lapuyade	Pleadings - Drafted, Revised and Edited FAC	550.00	2:06	1,155.00	151,433.75
01/04/2024	No	Jean Claude Lapuyade	Law and Motion - Revised and Edited P&As ISO Approval	550.00	4:00	2,200.00	153,633.75
01/05/2024	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	1:00	175.00	153,808.75
01/12/2024	No	Tesla Stone	Email Corres.	175.00	0:06	17.50	153,826.25
01/12/2024	No	Jean Claude Lapuyade	Law and Motion - Reviewed and Revised P&As with OC Comments to Approval Motion	550.00	2:24	1,320.00	155,146.25
01/15/2024	No	Tesla Stone	Proofread FAC	175.00	1:00	175.00	155,321.25
01/16/2024	No	Jean Claude Lapuyade	Law and Motion - Revise and Edited Order Approving Settlement	550.00	0:48	440.00	155,761.25
01/23/2024	No	Jean Claude Lapuyade	Law and Motion - Emails to/from OC Re Approval Motion	550.00	0:18	165.00	155,926.25
01/23/2024	No	Monnett DeLaTorre	Review points and authorities and prepare 17 page supporting Attorney Declaration.	500.00	3:00	1,500.00	157,426.25
01/23/2024	No	Monnett DeLaTorre	Review status of redline edits made by opposing counsel as to approval motion and follow up email to counsel for purposes of attempting to finalize points and authorities.	500.00	1:00	500.00	157,926.25
01/23/2024	No	Monnett DeLaTorre	Discussion with litigation team member, Jaclyn Joyce regarding status of approval motion and additional documentation needed for approval.	500.00	0:30	250.00	158,176.25
01/23/2024	No	Monnett DeLaTorre	Review final memorandum of points and authorities, discuss request for fees with litigation team and prepare Notice of Motion to be filed with the court.	500.00	2:18	1,150.00	159,326.25
01/23/2024	No	Monnett DeLaTorre	Review email from opposing counsel confirming agreement to proceed with latest draft of motion for approval and agreement regarding individual agreements.	500.00	0:06	50.00	159,376.25
01/23/2024	No	Monnett DeLaTorre	Finalize points and authorities in support for approval to account for all redlines by both parties and terms agreed upon.	500.00	1:36	800.00	160,176.25
01/23/2024	No	Monnett DeLaTorre	Review long form SAR and terms therein, points and authorities and prepare Proposed Order to be submitted to the court with approval motion.	500.00	1:30	750.00	160,926.25

JCL Law Firm

Unbilled Time

Activity: All Dates

ACTIVITY DATE	POSTING	EMPLOYEE	MEMO/DESCRIPTION	RATE	DURATION	AMOUNT	BALANCE
01/23/2024	No	Monnett DeLaTorre	Review costs and fees associated with Zakay firm and prepare supporting Attorney Declaration to be filed with Motion for Approval of PAGA settlement.	500.00	1:30	750.00	161,676.25
01/24/2024	No	Jean Claude Lapuyade	Settlement - Emails to/from OC RE Approval Motion	550.00	0:18	165.00	161,841.25
01/24/2024	No	Monnett DeLaTorre	Review Declaration prepared by claims administrator to be included in approval papers.	500.00	1:00	500.00	162,341.25
01/24/2024	No	Monnett DeLaTorre	Finalize all approval documents to include accurate and current billing amounts, cost amounts and applicable lodestar	500.00	1:30	750.00	163,091.25
01/25/2024	No	Tesla Stone	Email Corres.	175.00	0:06	17.50	163,108.75
01/31/2024	No	Jean Claude Lapuyade	Pleadings - R&R Defendant's Answer to FAC	550.00	1:06	605.00	163,713.75
02/05/2024	No	Tesla Stone	Case Meeting/File Maintenance/Docket & Calendar Check	175.00	0:48	140.00	163,853.75
Total for Maboudi v. Nieman Marcus (002-255)					359:33	\$163,853.75	

EXHIBIT 5

JCL Law Firm

Transaction Report

All Dates

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	AMOUNT	BALANCE
Maboudi v. Nieman Marcus (002-255)						
10/08/2021	Expense		Delaware Corp		10.00	10.00
10/08/2021	Expense		LWDA		75.00	85.00
10/31/2021	Journal Entry	Oct 2021 Postage		Postage for Oct 2021	17.12	102.12
10/31/2021	Journal Entry	Oct 2021 Postage		Copies for Oct 2021	5.20	107.32
12/29/2021	Expense		One Legal LLC	One Legal Order Number: 17437546 - Filing Fee Re: Proof of Service of Summons/Complaint	18.24	125.56
12/31/2021	Journal Entry	Dec 2021 Postage		Copies for Dec 2021	0.10	125.66
04/30/2022	Journal Entry	April 2022 Postage		Copies for April 2022	1.50	127.16
04/30/2022	Journal Entry	April 2022 Postage		Postage for April 2022	1.06	128.22
05/31/2022	Journal Entry	May 2022 Postage		Copies for May 2022	1.55	129.77
05/31/2022	Journal Entry	May 2022 Postage		Postage for May 2022	0.53	130.30
06/30/2022	Journal Entry	June 2022 Postage		Copies for June 2022	0.40	130.70
08/19/2022	Expense		One Legal LLC	One Legal Order Number: 18767270 - Filing Fee Re: Case Management Statement, Proof of Service	18.76	149.46
08/31/2022	Journal Entry	August 2022 Postage		Copies for August 2022	0.10	149.56
09/30/2022	Journal Entry	Sept. 2022Postage		Copies for September 2022	0.10	149.66
12/16/2022	Expense		One Legal LLC	One Legal Order Number: 19484360 - Filing Fee Re: Case Management Statement, Proof of Service	18.76	168.42
12/31/2022	Journal Entry	Dec 2022 Postage		Copies for December 2022	0.10	168.52
01/12/2023	Check		Jeffrey A. Ross	Mediation - Inv. 2372	6,250.00	6,418.52

JCL Law Firm

Transaction Report

All Dates

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	AMOUNT	BALANCE
02/27/2023	Expense		One Legal LLC	One Legal Order no. 19910041 - Filing Fee Re: Stipulation and Order, Proof of Service	39.89	6,458.41
04/30/2023	Journal Entry	April 2023 Postage		Copies for April 2023	1.50	6,459.91
04/30/2023	Journal Entry	April 2023 Postage		Postage for April 2023	24.30	6,484.21
05/02/2023	Deposit		Maboudi v. Nieman Marcus (002-255)	Refund Check from Jeffrey A. Ross	-6,250.00	234.21
05/02/2023	Check	EFT	Jeffrey A. Ross	Mediation - Inv. 2432	6,250.00	6,484.21
05/31/2023	Journal Entry	May 2023 Postage		Copies for May 2023	3.80	6,488.01
05/31/2023	Journal Entry	May 2023 Postage		Postage for May 2023	9.48	6,497.49
07/28/2023	Expense		One Legal LLC	One Legal Order Number: 20894283 - Filing Fee Re: Case Management Statement, Proof of Service	19.22	6,516.71
08/23/2023	Check	3382	Berger Consulting Group	Inv. 8340	2,087.50	8,604.21
08/31/2023	Journal Entry	August 2023 Postage		Copies for August 2023	0.60	8,604.81
08/31/2023	Journal Entry	August 2023 Postage		Postage for August 2023	0.63	8,605.44
Total for Maboudi v. Nieman Marcus (002-255)					\$8,605.44	
TOTAL					\$8,605.44	

EXHIBIT 6

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$200 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

Professional Associations:

- California Employment Lawyers Association, 2007 to Present
- Consumer Attorneys of San Diego, 2007 to 2020
- American Bar Association, Section of Litigation, Member, 2007 to 2020
- American Bar Association, Labor & Employment Section, Member, 2007 to 2020
- American Bar Association, Tort, Trial & Insurance Section, Member, 2007 to 2020
- California Bar Association, Labor & Employment Section, Member, 2007 to Present
- California Bar Association, Litigation Section, Member, 2007 to Present

Education:

- **California Western School of Law**
 - J.D. - 2006
 - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
 - B.A. - 2001
 - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 - 2006

Sydney Castillo-Johnson, Esq.
California Bar Number 343881
Associate Attorney

Biography:

Ms. Castillo-Johnson is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Castillo-Johnson's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Ms. Castillo-Johnson volunteered her time at California Western School of Law first as a student intern and later as a student manager with the Community Law Project which offers legal services to the low-income community of San Diego.

Education:

- **California Western School of Law**
 - J.D.- 2022
 - Honors:
 - Dean's Honor List: Spring 2021, Fall 2021
 - Public Service Honor Society Fall 2021
 - 3L Academic Merit Scholarship
 - Dean's Diversity, Service, and Leadership Scholarship
 - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
 - B.A. – 2018
 - Major: Criminal Justice

Monnett De La Torre, Esq.
California Bar Number 272884
Senior Associate

Biography:

Ms. De La Torre is a San Diego and Ventura County based labor and employment attorney representing aggrieved California employees throughout the State of California. Ms. De La Torre's litigation practice focuses on representing California employees in wage and hour class and representative actions for unpaid wages, missed meal and rest breaks, misclassification, penalties, and wrongful termination cases. Ms. De La Torre has extensive experience handling internal workplace investigations. Ms. De La Torre has handled matters before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission and Department of Labor.

Ms. De La Torre is a two-time recipient of the Super Lawyers Rising Star by Thomas Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to five percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California

Professional Associations:

- California Employment Lawyers Association, 2022 to Present
- Consumer Attorneys of San Diego, 2010-2015
- American Bar Association, Labor & Employment Section, Member, 2015 to Present
- California Bar Association, Labor & Employment Section, Member, 2015 to Present
- San Diego La Raza Lawyers Association, 2010-2015
- Ventura County Bar Association, 2015-Present
- Women Lawyers of Ventura County, 2015-Present

Education:

- **New England School of Law**
 - J.D.- 2010

- Honors:
 - Dean's List Consecutive years
- **University of California, San Diego**
 - B.A.- 2006
 - Major: Economics
 - Minor: Latin American Studies

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2021 and 2022
- Pacific Cost Business Times, "Top 40 under 40" Award
- Daily Transcripts "Top Young Attorney: nominee, consecutive years"

REPORTED CASES

- *Blanchette et al., v. Superior Court (GHA Homes)*, 8 Cal.App.5th 521, 2017
- *Chmurny v. State*, 392 Md. 159, 2006

EXAMPLES OF THE JCL LAW FIRM'S
REPRESENTATIVE CLASS ACTION & REPRESENTATIVE CASES

- *Ware v. Shake Shack Enterprises, LLC*, Alameda Superior Court Case No. 21CV002063 (October 19, 2023) Hon. Brad Seligman approved a \$1,330,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Trinh v. Precision Metal Products, Inc., et al.*, San Diego Superior Court Case No. 37-2022-00000965-CU-OE-CTL (October 16, 2023) Hon. Matthew C. Braner approved a \$450,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off the clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Anderson v. Barton Myers Associates, Inc., et al.*, Los Angeles Superior Court Case No. 21STCV43314 (October 12, 2023) Hon. Elihu M. Berl approved a \$900,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *DeSanctis v. Douglas Products and Packaging Company, LLC*, Contra Costa Superior Court Case No. C21-01874 (October 11, 2023) Hon. Charles S. Treat approved a \$372,500.00 class action and PAGA action settlement for, *inter alia*, failure to pay for all hours worked. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Jackson v. White Fir, LLC, et al.*, Sacramento Superior Court Case No. 34-2021-00301656 (October 6, 2023) Hon. Lauri A. Damrell approved a \$750,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Kneisly v. SR Machining, Inc., et al.*, Riverside Superior Court Case No. CVRI2201491 (October 5, 2023) Hon. Harold W. Hopp approved a \$220,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Mendez v. Bondz, Inc., et al.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0007486 (September 14, 2023) Hon. George J. Abdallah, Jr. approved a \$180,000.00 class action and PAGA action settlement for, *inter alia*, failure to comply with piece-rate laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Baray v. Curation Foods, Inc., et al.*, Santa Barbara Superior Court Case No. 21CV02834 (August 29, 2023) Hon. James F. Rigali approved a \$495,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Rodriguez, et al. v. Ferma Greenbox, Inc., et al.*, Alameda Superior Court Case No. RG21101104 (August 23, 2023) Hon. Evelio Grillo approved a \$200,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *O'Quinn v. Laugh Factory, Inc.*, Los Angeles Superior Court Case No. 19STCV28155 (August 1, 2023) Hon. Carolyn B. Kuhl approved a \$144,000.00 class action and PAGA action settlement for, *inter alia*, unlawful tip pooling. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Toler v. Total Testing Solutions, LLC*, Los Angeles Superior Court Case No. 21STCV38452 (July 27, 2023) Hon. Elihu M. Berle approved a \$160,000.00 class action and PAGA action settlement for meal and

rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

- *Rodriguez v. EAH, Inc.*, Santa Cruz Superior Court Case No. 21CV00884 (July 25, 2023) Hon. Marjorie Carter approved a \$1,450,000.00 class action and PAGA action settlement for, *inter alia*, failure to compensate overtime and redeemed sick pay at the regular rate of pay. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Neutall v. Urban Alchemy*, San Francisco Superior Court Case No. CGC-20-588622 (July 13, 2023) Hon. Richard B. Ulmer approved a \$980,000.00 class action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel.
- *Rodriguez v. RM Parks Place, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2021-6050 (June 7, 2023) Hon. Erin Guy Castillo approved a \$175,000.00 class action and PAGA action settlement for, *inter alia*, wage statement violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Chrestensen v. Northeastern Rural Health Clinics* Lassen, Superior Court Case No. 63703 (April 13, 2023) Hon. Leonard J. La Casse approved a \$270,000.00 class action and PAGA action settlement for, *inter alia*, unpaid overtime wages. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Hernandez, et al. v. Parenting Network, Inc.*, Tulare Superior Court Case No. VCU287027 (March 14, 2023) Hon. Bret Hilman approved a \$225,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Sarmiento v. Caduceus Healthcare Inc.*, San Diego Superior Court Case No. 37-2021-00002597 (March 10, 2023) Hon. Richard S. Whitney approved a \$315,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Garces, et al. v. DriverDo, LLC*, Los Angeles Superior Court Case No. 19STCV32773 (January 24, 2023) Hon. Carolyn B. Kuhl approved a \$700,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *De Jesus v. Guardian Angel Home Care, Inc.*, San Diego Superior Court Case No. 37-2020-00021049-CU-OE-CTL (July 29, 2022) Hon. Ronald F. Frazier approved a \$300,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Kaur v. Aces 2020 I, LLC, et al.*, Contra Costa Superior Court Case No. MSC20-02482 (December 22, 2022) Hon. Edward G. Weil approved a \$585,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Molina v. Hawaiian Airlines, Inc.*, Los Angeles Superior Court Case No. 20STCV28079 (November 23, 2022) Hon. Maren Nelson approved a \$250,000 class action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the Plaintiff.
- *Lang Jr. v. Pathways Community Services LLC*, San Diego Superior Court Case No. 37-2019-00049969-CU-OE-CTL (September 9, 2022) Hon. James A. Mangione approved a \$160,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Martinello v. Century Wilshire, Inc.*, Los Angeles Superior Court Case No. 20STCV32613 (March 1, 2022) Hon. Carolyn Kuhl approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel.
- *Wilson v. Spreen Inc. (dba Spreen Honda)*, San Bernardino Superior Court Case No. CIVSB2119857 (April 6, 2022) Hon. David Cohn approved a \$300,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Ledesma v. TVJ Sons I, Inc.; Porter and Howard, Inc.* Santa Barbara Superior Court Case No. 20CV03573 (November 10, 2021) Hon. Jed Beebe approved a \$350,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC represented the State of California and the Aggrieved Employees.
- *Jacobs v. Rush Media Company, LLC; XLT Management Services, Inc.*, Los Angeles Superior Court Case No. 20STCV32350 (May 2, 2022) Hon. Daniel J. Buckley appointed the JCL Law Firm, APC as Class Counsel and approved a \$330,000 class action settlement for, *inter alia*, independent contractor misclassification.
- *Chavez v. HTL Conrad Domestic, LLC; HTL Conrad Domestic Employer, LLC*, San Diego Superior Court Case No. 37-2020-00016193-CU-OE-CTL (June 9, 2022) Hon. John S. Meyer approved a \$850,000 PAGA action settlement for, *inter alia*, failure to compensate overtime at the regular rate of pay. The JCL Law Firm, APC acted as representative PAGA counsel for the State of California and the Aggrieved Employees.
- *Renteria v. Love's Country Stores of California*, San Bernardino Superior Court Case No. CIVDS20164481 (June 14, 2022) Hon. David Cohn approved a \$2.2 million dollar class action and PAGA action settlement

for, *inter alia*, unpaid overtime and sick pay. The JCL Law Firm, APC acted as Class Counsel and as representative PAGA counsel for the State of California.

- *Lopez v. Adidas America, Inc.*, Ventura Superior Court Case No. 56-2021-005498444-CU-OE-VTA (April 4, 2022) Hon. Mark Borrell approved a \$1.5 million dollar class action and PAGA action settlement for, *inter alia*, inaccurate overtime calculations, and appointed the JCL Law Firm, APC as Class Counsel.
- *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq. as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.
- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

EXHIBIT 7

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

Andrea Amaya (State Bar #348080)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

aamaya@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PARASTOO MABOUDI, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

THE NEIMAN MARCUS GROUP LLC, a
Delaware Limited Liability Company; and
DOES 1 through 50, Inclusive;

Defendants.

Case No. 21CV391973

Action Filed: December 15, 2021

**DECLARATION OF SEAN HARTRANFT IN
SUPPORT OF PLAINTIFFS' MOTION TO
APPROVE PAGA ACTION SETTLEMENT**

Hearing Date: June 26, 2024

Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner

Department: 19

DECLARATION OF SEAN HARTRANFT

I, Sean Hartranft, declare as follows:

1. I am the Chief Executive Officer of Apex Class Action LLC., a settlement administration company headquartered in Irvine, California. I have personal knowledge of the facts outlined in this declaration and, if called as a witness, I could and would competently testify thereto.

2. Apex Class Action's team has been directly involved with settlement administration for a combined 15 years and has successfully managed numerous class & PAGA actions during that time. Our team comprises experienced professionals with extensive knowledge of settlement administration. In addition, Apex Class Action has the necessary technology and infrastructure to efficiently manage large-scale settlements. We utilize state-of-the-art software and systems to ensure that all aspects of the administration process are executed accurately and efficiently.

3. The legal practitioners or parties involved do not possess any form of ownership stake or affiliation with Apex Class Action.

4. Apex Class Action has extensive expertise in the dissemination of settlement notices and administration of PAGA settlements. Our range of services includes first-class mail via the United States Postal Service, a bilingual toll-free call center, interactive & static website development and support, enterprise database management, response processing, and Qualified Settlement Fund (QSF) distribution for settlements of various sizes. We uphold the highest level of confidentiality in all our operations, and any employee data and communication received by us will be treated with the utmost confidentiality and will not be disclosed to any unauthorized party. Attached is our current CV as **Exhibit A**, highlighting our primary competencies in settlement administration.

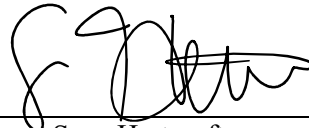
5. Apex Class Action ensures that Client and employee information is only used for the purposes specified in the relevant agreements or court orders governing the provision of its legal services. To safeguard employee information, Apex Class Action has implemented a comprehensive process to identify, assess, and mitigate risks in all areas of its operations, regularly evaluating the effectiveness of its security measures. Access to aggrieved employee information is limited to employees, agents, or subcontractors who require it to perform their duties, and Apex Class Action conducts background checks on all personnel with access to sensitive personal information, to ensure they do not pose a threat to the

1 security of client or aggrieved employee information. To guarantee the security of the settlement
2 administration process, Apex Class Action maintains Professional Liability and Cyber Liability Insurance
3 coverage, as required by legal standards and best practices in the legal profession.

4 6. Apex Class Action disbursement process involves (i) obtaining a Federal Employer
5 Identification Number (FEIN) from the Internal Revenue Service (IRS) under the name of the settlement
6 case; (ii) establishing a QSF to manage the distribution of settlement funds; (iii) conducting preliminary
7 and final calculations to determine the individual settlement amounts, including attorneys' fees, costs,
8 enhancement awards, and any other court-approved designees; (iv) calculating and reporting state and
9 federal taxes as applicable; (v) and disseminating approved settlement funds and tax forms via First-Class
10 USPS mail.

11 7. The administration fees for Apex Class Action's management of this PAGA settlement will
12 not exceed \$12,990.00, as specified in **Exhibit B**. This document presents a comprehensive plan detailing
13 the specific administration services that will be provided.

14
15 I declare under penalty of perjury under the laws of the state of California that the foregoing is
16 true and correct. Executed this 23rd day of January 2024, in Irvine, California.

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20 Sean Hartranft
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EXHIBIT A



CASE TYPES

- Wage & Hour
- Private Attorneys
General Act (PAGA)
- Belaire West
- Class Certification
- Fair Labor Standards
Act (FLSA)
- Telephone Consumer
Protection Act (TCPA)
- Employee Retirement
Income Security Act
(ERISA)
- Consumer
- Product Liability

SUMMARY

Apex Class Action is a team of experienced professionals with a strong understanding of the legal processes and procedures surrounding the settlement of class action lawsuits. As an organization, we possess excellent communication and organizational skills that are combined with innovative technology to efficiently manage complex projects and timelines.

From pre-settlement consultation to final disbursement, our technology platform and data security management measures are centered around integration, automation, and observability to ensure that class members are quickly and accurately paid.

PRELIMINARY CONSULTATION

Our complimentary preliminary consultation is used to create a framework for ensuring that all parties understand the project's scope, timeline, and budget. After establishing objectives and expectations between the plaintiff and defense counsel, our team will explore any additional opportunities to identify potential class members. Going as far as providing a detailed interactive banner ad campaign and print media options to achieve maximum reach.

CASE MANAGEMENT

Our expert Data Managers and Senior Case Executives oversee the administration of all class action lawsuits, ensuring compliance with court orders, settlement agreements, and industry standards. We work closely with the plaintiff and defense counsel to manage the settlement process, including the funding and distribution of settlement funds to eligible class members.

Our mailing and notification services start with data scrubbing and creation of a class database to ensure the correct contact information of all class members. Furthermore, the class data base will then be validated using the USPS National Change of Address (NCOA) database. Court certified translation with over 65 languages are available.. If mail is returned as undeliverable, all notices will be re-mailed after obtaining an updated address through skip tracing the class members' contact information.



To ensure transparency throughout the entire process, a steady cadence of reports, as defined during the preliminary consultation, is generated throughout the administration process for both the plaintiff and defense counsel.

Our ability to offer cost-effective pricing is based on our expertise in utilizing cutting-edge technology, highly skilled professionals, and an optimized process. If the courts approve the use of the latest electronic notification methods, such as email and banner ads, this solution will provide both certainty and cost-effectiveness. By utilizing electronic disbursement, we can offer a highly efficient strategy where settlement awards are delivered directly to class members without the potential drawbacks associated with traditional mail delivery.

TAX COMPLIANCE & CASE RESOLUTION

Apex's proprietary technology to manage the qualified settlement fund (QSF) administration allows us to efficiently handle the process from procurement of an FDIC-insured bank account all the way to preparing and filing 1120-SF tax returns. Our full suite of QSF services includes:

- Preparing Documents
- Opening FID-Insured Bank Account
- Timely Reporting of QSF Balance
- Prepare And File 1120-SF Tax Returns with Quarterly Tax Obligations
- Obtaining QSF Tax ID
- Treasury Management
- QSF Audit Reports

CONTACT

Address
PO Box 54668
Irvine, CA 92619

Email
Info@apexclassaction.com

Phone
1.800.355.0700

EXHIBIT B

**Quotation Request:**

Claude Lapuyade
JCL Law Firm A.P.C
jlapuyade@jcl-lawfirm.com
888.498.6999

Case Name:

Maboudi v. Neiman Marcus

Date:

Thursday, October 5, 2023

RFP Number:

69990030

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Number of Aggrieved Employees	2,350
Certified Language Translation:	No
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization

Import and Standardize Data*	Per Hour	\$125.00	3	\$375.00
Data Analyst	Per Hour	\$150.00	3	\$450.00
Sub Total:				\$825.00

*Data provided must be in a workable format. Apex can standardized provided data at an additional cost of \$150/hr.

Project Management

Project Management	Per Hour	\$150.00	4	\$600.00
Project Coordinator	Per Hour	\$90.00	4	\$360.00
Data Analyst and Reporting	Per Hour	\$140.00	3	\$420.00
Sub Total:				\$1,380.00

Toll-Free Contact Center, Website, Reporting & Pre Distribution

Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$350.00	1	\$350.00
NCOA Address Update (USPS)	Static Rate	\$386.50	1	\$386.50
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$856.50



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	5	\$600.00
Account Management and Reconciliation	Per Hour	\$140.00	5	\$700.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.25	2,350	\$2,937.50
USPS First Class Postage	Per Piece	\$0.66	2,350	\$1,551.00
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	235	\$470.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	10	\$1,000.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Sub Total:				\$8,508.50

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	4	\$540.00
Project Management Reconciliation	Per Hour	\$100.00	4	\$400.00
Declarations	Per Hour	\$120.00	4	\$480.00
Sub Total:				\$1,420.00

TOTAL ESTIMATED ADMINISTRATION COST: \$12,990.00				
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.